



CODE ENFORCEMENT STAFF PRESENTATION

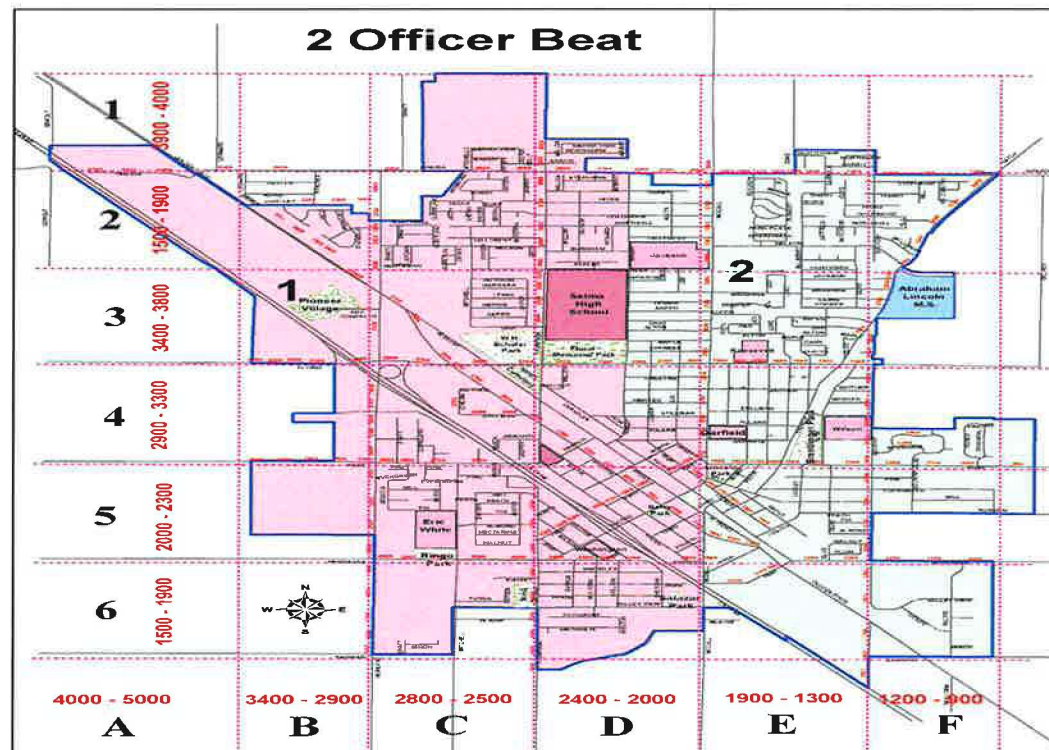
CASE LOAD, PROCESSES, AND CODES

PRESENTED BY
JUAN MENDEZ –
CODE ENFORCEMENT OFFICER

WHAT DO WE DO AS CODE ENFORCEMENT OFFICERS?

- Code Enforcement receives and documents complaints regarding health, safety, parking, building, business licenses and/or municipal code or other city ordinance violations; investigates complaints, determines validity of complaints and takes appropriate action; assists in the preparation of court cases in municipal code violations which cannot be handled through administrative means; and performs related duties as required.

2 BEAT MAP- ROTATE EVERY 6 MONTHS



CASE LOAD

Code Enforcement Case Transactions Report

Period: April 20, 2019 through September 30, 2020

Opened Cases
271

Closed Cases
185

Current Open Cases
86

- The top three violation types are
 1. Property Maintenance
 2. Nuisance Vacant properties
 3. Vehicle abatement
- Number of Citations Issued from April 20, 2020 – September 30, 2020
 - Issued Administrative Citations – 46
 - Other projects worked on during this time: Building a network with agencies like Fresno County, Caltrans to provide resources and services to City of Selma Residents.

PROCESS

ADMINISTRATIVE CITATIONS & ABATEMENT PROCESS

- Complaint/Pro-active
- Investigate
- Notice of Violation (14 days for compliance) (Section 9-3-5)
- 1st Administrative Citation issued (10 days for compliance and \$100.00 fine) (Section 1-20-6)
- 2nd Administrative Citation issued (10 days for compliance and \$200.00 fine)
- 3rd Administrative Citation issued (10 days for compliance and \$500.00 fine)
- Council authorize City to obtain abatement warrant
- Abate nuisance
- Lien property



FOCUSING ON:

Private Residential Properties

Vacant /Nuisance properties

Clean-up projects

Vehicle Abatement Project

COVID-19 Outreach and Support

Bill Board Signs

Shopping Cart Project

Animal Complaints



PRIVATE RESIDENTIAL PROPERTIES



PRIVATE RESIDENTIAL PROPERTIES

BEFORE / AFTER



VACANT NUISANCE PROPERTY BEFORE / AFTER





VACANT/NUISANCE PROPERTIES



VACANT NUISANCE PROPERTY

BEFORE / AFTER



CLEAN-UP PROJECT BEFORE AND AFTER





CLEAN-UP PROJECTS



CLEAN-UP PROJECT - WATER BASIN BEHIND EYE-Q BEFORE / AFTER



CLEAN-UP PROJECTS BEFORE AND AFTER



CLEAN-UP PROJECT ON GOLDEN STATE BLVD. / HIGHLAND AVE



CLEAN-UP PROJECT (ALLEY) BEFORE AND AFTER



CITY STAFF CLEAN-UP PROJECT ON HIGHLAND AVENUE



CALTRANS CLEAN-UP PROJECT (FLORAL AVENUE OFF RAMP) BEFORE AND AFTER



CALTRANS CLEAN-UP PROJECT (FLORAL AVENUE OFF RAMP) CONTINUE BEFORE AND AFTER





VEHICLE ABATEMENT



VEHICLE ABATEMENT PROJECT ON PRIVATE PROPERTY BEFORE AND AFTER



VEHICLE ABATEMENT PROJECT ON PRIVATE PROPERTY

Before



After



NUISANCE VEHICLE ABATEMENT





COVID-19 OUTREACH



COVID- 19 OUT REACH AND SUPPORT

Provided re-open restrictions to 40 Restaurants in one day

Assisted with Senior food distribution

Daily inspections of Restaurants, Gyms, Barber Shops, Hair Salons, Churches and other large Gatherings

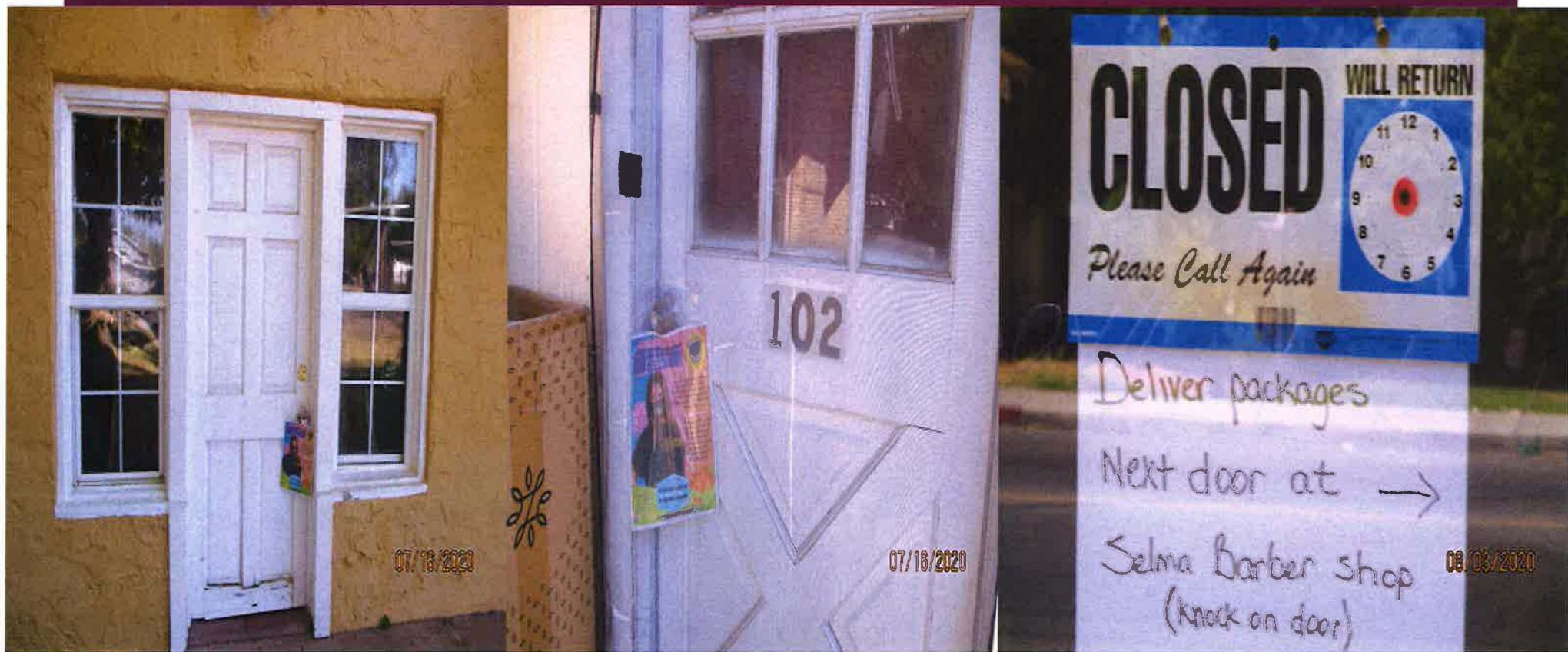
Yard Sales

Store price gouging checks

Residential food venders

Educating Public about COVID -19

COVID- 19 OUTREACH AND SUPPORT



COVID-19 OUTREACH AND SUPPORT



COVID-19 OUTREACH AND SUPPORT





BILLBOARD SIGNS NEAR HWY 99 AND 2ND STREET



NUISANCE BILL BOARD SIGNS ABATEMENT PLAN

Address	Courtesy notice	1 st administrative Citation	2 nd administrative citation	3 rd administrative citation	City Council Abate Warrant
1635 Second St	August 06, 2020	On 09/17/2020 City Staff held a meeting with Property Owner to discuss the plans for the sign.(No cite Issued)	*will update Accordingly	* Will Update Accordingly	*Update Accordingly
1505 Second St	August 12, 2020	Currently scheduling meeting with	*will update Accordingly	*Update Accordingly	*Update Accordingly

BILLBOARD SIGNS



SHOPPING CARTS TITLE 8 CHAPTER 4

- Since Abandoned Shopping cart Ordinance was adopted in February 3, 2020, City Staff had focused on collecting shopping carts with in City limits.
 - 1.) 85 un-identified shopping carts have been collected by City Staff.
 - 2.) 125 shopping carts have been collected and retrieved by business owners.
 - 3.) Business owners are going out collect their shopping carts. They collect the shopping carts when notified by City Staff.
- City staff is working with Business owners on completing a plan that works to prevent shopping carts from being removed from the property. Plans are at various stages. Dead line to complete plan is October 15th 2020.
- City Staff has been collecting shopping carts every Friday. The shopping carts are collected and business are notified. Business owners then retrieve the collected shopping carts from City yard located at 2155 E Front Street on Tuesdays.
- Shopping carts that are not retrieved are then tagged and processed according to Abandoned Shopping Cart Ordinance Title 8 Chapter 4 section 8.
- City Staff will continue to Work together with business Owners to keep shopping carts with in their shopping center and out of City of Selma Streets.

ABATEMENT OF SHOPPING CARTS FROM CITY STREETS.



ABATEMENT OF SHOPPING CARTS FROM CITY STREET CONTINUE



ABATEMENT OF SHOPPING CARTS FROM CITY STREET CONTINUE

City Selma Yard



Local cart retrieval yard





ANIMAL COMPLAINTS



ANIMAL COMPLAINTS



SUMMARY AND DIRECTION

Continue to be pro-active and abate City blight that include:

- Nuisance vacant properties
- Property Maintenance
- Illegal Dumping/ Clean-up Projects
- Looking forward to continue working with property owners on projects that got put on pause do to COVID-19 restriction. The projects will be updated on the next Code Enforcement Presentation.



THANK YOU

- Police Department
- Public Works Department
- Fire Department
- Finance Department

HOW TO CONTACT CODE ENFORCEMENT:

- ❑ Javier Vidrio (559) 891-2206 jvidrio@cityofselma.com
- ❑ Juan Mendez (559) 891-2207 juanm@cityofselma.com
- ❑ Reception (559) 891-2200
- ❑ City of Selma Action Line <https://www.egovlink.com/selma/action.asp>

**CITY OF SELMA
REGULAR CLOSED SESSION MEETING
February 18, 2020**

The regular closed meeting of the Selma City Council was called to order at 5:00 p.m. in the Council Chambers. Council members answering roll call were: Avalos, Robertson, Trujillo, Mayor Pro Tem Guerra, and Mayor Franco.

Also present were Special Counsel Costanzo, City Manager Gallavan, Fire Chief Petersen, and interested citizens.

The notice for this meeting was duly posted in a location visible at all times by the general public seventy-two hours prior to this meeting.

CLOSED SESSION: At 5:01 p.m., Mayor Franco recessed the meeting into Closed Session to discuss the following:

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to Government Code Section 54956.9(d)(2):
One potential case

CONFERENCE WITH LABOR NEGOTIATOR: Pursuant to Government Code Section 54957.6:

Agency Negotiator:	Teresa Gallavan, City Manager
Employee Organization:	International Association of Firefighters Local 3716

Mayor Franco reconvened the meeting from closed session at 6:00 p.m., stating that there was no reportable action.

ADJOURNMENT: There being no further business, the meeting was adjourned at 6:01 p.m.

Respectfully submitted,

Reyna Rivera
City Clerk

**CITY OF SELMA
COUNCIL REGULAR MEETING
February 18, 2020**

The regular meeting of the Selma City Council was called to order at 6:02 p.m. in the Council Chambers. Council members answering roll call were: Avalos, Robertson, Trujillo, Mayor Pro Tem Guerra, and Mayor Franco.

Also present were Special Counsel Costanzo, Assistant City Manager Moreno, City Manager Gallavan, Community Services Director Kirchner, Fire Chief Petersen, Acting Police Chief Dyck, Public Works Director Ferrell, and interested citizens.

The agenda for this meeting was duly posted in a location visible at all times by the general public seventy-two hours prior to this meeting.

INVOCATION: Deacon Ed Harmon, St. Joseph's Catholic Church led the invocation. A moment of silence was taken for those affected by the coronavirus.

SELMA BOYS AND GIRLS CLUB PRESENTATION: Mr. Mark Armenta introduced Ms. Maria Gutierrez, Selma Boys and Girls Club Youth of the Year, who stepped forward to read her speech to Council. Council thanked her for attending.

PAVEMENT MANAGEMENT PROGRAM PRESENTATION: City Engineer Joseph Daggett, stepped forward to provide a power point presentation. After Council discussion, he was thanked for the information.

CONSENT CALENDAR: Mayor Pro Tem Guerra requested to pull agenda item 1.d. for separate discussion. Council member Robertson motioned to approve the remainder of the Consent Calendar as written. Motion was seconded by Council member Trujillo and carried unanimously.

- 1.a. Approved Consideration of the August 12, 2019 Council meeting minutes
- b. Approved Consideration of the August 19, 2019 Council meeting minutes
- c. 2020-4R Consideration of a Resolution Adopting an amended Master Salary Schedule for all City Employees
- d. Pulled Consideration of the check register dated February 11, 2020

CONSENT CALENDAR AGENDA ITEM 1.d. CONSIDERATION OF THE CHECK REGISTER DATED FEBRUARY 11, 2020: After Council discussion, Council member Trujillo motioned to approve the CHECK REGISTER DATED FEBRUARY 11, 2020. Motion was seconded by Mayor Pro Tem Guerra and carried unanimously.

2. 2020-5R Consideration of a Resolution approving the creation of an underground utility district to convert overhead utility lines to underground facilities pursuant to electric Rule 20A – Public hearing

City Engineer Joseph Daggett discussed the necessity of the proposed underground utility district in order to utilize accumulated funds allocated for City of Selma and proposed project locations that meet the criteria for use of these funds.

After discussion, Mayor Franco opened the public hearing at 6:45 p.m. There being no one to speak on the matter, the public hearing was then closed at 6:46 p.m.

After Council discussion, motion was made by Council member Trujillo and seconded by Council member Avalos to adopt RESOLUTION NO. 2020-5R APPROVING THE CREATION OF AN UNDERGROUND UTILITY DISTRICT TO CONVERT OVERHEAD UTILITY LINES TO UNDERGROUND FACILITIES PURSUANT TO ELECTRIC RULE 20, IN THE CITY OF SELMA. The motion carried unanimously.

3. Report Council request to discuss a bicycle-licensing program
 Only

Acting Police Lieutenant Reid reported on the request received from Council member Avalos regarding the bicycle-licensing program and discussed the existing Selma Municipal Code, the process that would be involved for enforcement, and the California state vehicle code that regulates these programs.

After discussion, public comment was received from Mr. Dan Ruiz, Ms. Theresa Salas, Mrs. Rose Robertson, and Mr. Robert Cortez.

After further Council discussion, Council thanked Acting Police Lieutenant Reid for the information.

4. Approved Presentation and discussion regarding the Fiscal Year 2018-19
 Financial Statements with Independent Auditor's Report

Assistant City Manager Moreno introduced Mr. Bill Patterson, Sampson, Sampson & Patterson, LLP.

Mr. Patterson reviewed the 2018-2019 Fiscal Year Financial Statements with Independent Auditor's Report. He stated that the Governmental Funds within the report consisted of the General, Special Revenue, Debt Services, and Capital Projects Funds. The combined governmental funds ended the fiscal year with a fund balance of \$26.7 million. The City's General Fund ended the year with a balance of \$4,566,273, an increase of \$1,802,417 from the previous year. He discussed in detail the Statement of Revenues, Expenditures, and Changes in Fund Balance.

After Council discussion, Council member Trujillo motioned to ACCEPT THE FISCAL YEAR 2018 – 2019 FINANCIAL STATEMENTS WITH INDEPENDENT AUDITOR'S

REPORTS. The motion was seconded by Council member Avalos and carried unanimously.

RECESS: Mayor Franco recessed the Council meeting for a short break at 7:44 p.m. The meeting reconvened at 7:48 p.m.

5. Report Report regarding the City's Billboard Sign Display Policy and 2020
 Only Calendar

Community Services Director Kirchner reported on the recent policy allowing consideration for publicizing non-profit organization events on the Whitson and Floral Avenue billboard. He then discussed the applications received and reported that there would not be a need for a drawing since the applications received do not conflict with each other.

After discussion, Council thanked Community Services Director Kirchner for the report.

6. Approved Consideration of the Measure C Transit Oriented Development
 Cycle VIII Program Housing Infill Incentive Program Grant
 Application

City Manager Gallavan reported on the upcoming grant funding opportunity and discussed a project that staff has identified which would assist Mr. Dwight Nelson's approved plan for building a 20-unit apartment complex at McCall and Nelson Avenue by offsetting a portion of its development impact fees.

After much discussion regarding the proposed project and the requirements of the Measure C Transit Oriented Development ("TOD") Cycle VIII Program Housing Infill Incentive Program Grant, Council member Avalos motioned to DIRECT STAFF TO APPLY FOR THE GRANT TO ASSIST THE APARTMENT PROJECT BY OFFSETTING A PORTION OF ITS DEVELOPMENT IMPACT FEES. Motion was seconded by Council member Robertson and carried unanimously.

DEPARTMENT REPORTS: City Manager Gallavan updated Council on the recruitment progress for the Administrative Analyst position, which has been completed and Ms. Tracy Tosta is scheduled to begin in March. She reported on the recruitment process for the Police Chief and Community Development Director, and that the Criscom Company met with Assembly Member Arambula's office and discussed the need to align funding efforts with Senator Hurtado's office.

Assistant City Manager Moreno reported that he attended a High Speed Rail meeting today.

Public Works Director Ferrell updated Council on the Peter Ringo Park project.

Fire Chief Petersen thanked Public Works Director Ferrell and the Public Works department for assisting with the dirt removal in order to move forward on the training center move project.

Acting Police Chief Dyck reported that the vehicle replacement should be completed soon, which replaces the vehicle totaled by an impaired driver.

Community Services Director Kirchner reported that the Selma Arts Center was rented out for a town hall meeting by Congressman TJ Cox and was well attended.

COUNCIL REPORTS: Council member Avalos discussed a need for a cleanup on the west side of town.

Council member Trujillo reported on attending the Selma Kingsburg Fowler County Sanitation District CASA conference as well as a concrete conference.

Council member Robertson discussed the PERS pension discount rate and the business district. He reported on attending the Selma Unified School Board meeting and requested code enforcement reports and a joint meeting with the Selma Unified School Board.

Mayor Pro Tem Guerra reported on attending the Selma Unified School Board meeting and the League of Cities general membership meeting. She also discussed the police station.

Mayor Franco reported on attending the League of Cities general membership meeting, Mr. Buford Joice's Century Club presentation, and discussed the option to cancel the first meeting in April. He also inquired about the energy assessment with Engie Services.

ADJOURNMENT: There being no further business, the meeting was adjourned at 8:23 p.m.

Respectfully submitted,

Reyna Rivera
City Clerk

**CITY OF SELMA
COUNCIL SPECIAL MEETING
February 24, 2020**

The special meeting of the Selma City Council was called to order at 11:01 a.m. in the Council Chambers. Council members answering roll call were: Avalos, Robertson, Trujillo, Mayor Pro Tem Guerra, and Mayor Franco.

Also present were Special Counsel Costanzo, City Manager Gallavan, and interested citizens.

The agenda for this meeting was duly posted in a location visible at all times by the general public twenty-four hours prior to this meeting.

CLOSED SESSION: At 11:02 a.m., Mayor Franco recessed the meeting into Closed Session to discuss the following:

PUBLIC EMPLOYEE APPOINTMENT PURSUANT TO GOVERNMENT CODE §54957: Title: Police Chief

Mayor Franco reconvened the meeting from closed session at 11:18 a.m. and Special Counsel Costanzo reported that Council unanimously approved the terms of the new Police Chief Agreement and that an appointment would be forthcoming.

ADJOURNMENT: There being no further business, the meeting was adjourned at 11:19 a.m.

Respectfully submitted,

Reyna Rivera
City Clerk

**CITY OF SELMA
COUNCIL SPECIAL MEETING
March 2, 2020**

The special meeting of the Selma City Council was called to order at 5:35 p.m. in the Council Chambers. Council members answering roll call were: Avalos, Robertson, Trujillo, Mayor Pro Tem Guerra, and Mayor Franco.

Also present were Special Counsel Costanzo, City Manager Gallavan, and interested citizens.

The notice for this meeting was duly posted in a location visible at all times by the general public twenty-four hours prior to this meeting.

ORAL COMMUNICATIONS: Dominic Sanchez, EV Charging Solutions stepped forward to discuss the transportation program they are working on with the S.M.A.R.T. Center and Selma COM to provide electric vehicle transportation services.

CLOSED SESSION: At 5:38 p.m., Mayor Franco recessed the meeting into Closed Session to discuss the following:

PUBLIC EMPLOYMENT PURSUANT TO GOVERNMENT CODE §54957–PUBLIC EMPLOYEE APPOINTMENT: City Attorney

Mayor Franco reconvened the meeting from closed session at 6:06 p.m., stating that direction was given to staff with no other reportable action.

ADJOURNMENT: There being no further business, the meeting was adjourned at 6:07 p.m.

Respectfully submitted,

Reyna Rivera
City Clerk

**CITY OF SELMA
COUNCIL REGULAR MEETING
March 2, 2020**

The regular meeting of the Selma City Council was called to order at 6:08 p.m. in the Council Chambers. Council members answering roll call were: Avalos, Robertson, Trujillo, Mayor Pro Tem Guerra, and Mayor Franco.

Also present were Special Counsel Costanzo, Assistant City Manager Moreno, City Manager Gallavan, Community Services Director Kirchner, Fire Chief Petersen, Acting Police Chief Dyck, Public Works Director Ferrell, and interested citizens.

The agenda for this meeting was duly posted in a location visible at all times by the general public seventy-two hours prior to this meeting.

INVOCATION: Dale Leamon, Chaplain, Adventist Medical Center-Selma led the invocation.

ORAL COMMUNICATIONS: Dr. Tanya Fisher, Superintendent, Selma Unified School District expressed appreciation for the assistance of City staff. Mark Armenta, Unit Director, Boys and Girls Club reported on a recent youth trip, upcoming trips, and invited all to a fundraising lunch at Lincoln Park on April 16, 2020.

EMPLOYEE INTRODUCTION-ADMINISTRATIVE ANALYST TRACY TOSTA: City Manager Gallavan introduced new employee Tracy Tosta, Administrative Analyst in Economic Development. Tracy Tosta then stepped up to briefly discuss her eagerness to contribute to the growth and development of the City of Selma.

City Manager Gallavan then invited Lieutenant Myron Dyck to step forward and expressed the gratitude of all for his willingness to serve as Acting Police Chief for the past several months, and presented him with a plaque in recognition of his service to the community.

POLICE CHIEF JOE GOMEZ SWEARING-IN CEREMONY: City Manager Gallavan introduced the new Police Chief Joseph Gomez, shared a brief overview of his qualifications and experience. Police Chief Gomez spoke briefly on his excitement for the opportunity to serve the community of Selma in his new role and thanked all for the outpouring of support and welcome from Council, City staff, and the community. Chief Gomez was then sworn-in.

RECESS: At 6:26 p.m. the meeting was recessed for a short break. Mayor Franco reconvened the meeting at 6:45 p.m.

CONSENT CALENDAR: Council member Robertson requested to pull agenda item 1.f. for separate discussion. Council member Robertson then motioned to approve the remainder of the Consent Calendar as written. Motion was seconded by Mayor Pro Tem Guerra and carried unanimously.

- 1.a. Approved
2020-6R Consideration of a Resolution approving the Supplemental Agreement with the State of California Department of Transportation for preliminary engineering for roadway reconstruction
- b. Approved
2020-7R Consideration of a Resolution adopting an amended Master Salary Schedule for all City Employees
- c. Approved
2020-8R Consideration of a Resolution adopting Amendment No. 1 to the International Association of Firefighters (IAFF) Local 3716 Memorandum of Understanding to include Fire Department Non-Safety EMS personnel
- d. Approved Consideration of a System License and Support Agreement between the City and Response Analytics, LP for Electronic Patient Care Report Data Collection and Reporting System
- e. Approved
2020-9R Consideration of a Resolution granting City Manager authority to include provisions for payment of severance to City department heads employed by contract
- f. Pulled Consideration of the check register dated February 24, 2020

CONSENT CALENDAR AGENDA ITEM 1.f. CONSIDERATION OF THE CHECK REGISTER DATED FEBRUARY 24, 2020: After Council discussion, Council member Robertson motioned to approve the CHECK REGISTER DATED FEBRUARY 24, 2020. Motion was seconded by Council member Avalos and carried unanimously.

- 2. Approved Consideration of an Amended 2019/2020 Budget, which will allow for the necessary expenditures to move the Fire Department Training Facility

Fire Chief Petersen discussed the progress on the planned move of the Fire Department Training Center to the Selma City Yard and costs associated with the relocation. Moses Stites, General Manager, FCRTA stepped forward to answer Council questions and confirm funding they have allocated for the project.

After Council discussion, motion was made by Council member Robertson to approve the AMENDED 2019/2020 BUDGET, WHICH WILL ALLOW FOR THE NECESSARY EXPENDITURES TO MOVE THE FIRE DEPARTMENT TRAINING FACILITY. Motion was seconded by Council member Avalos and carried unanimously.

- 3. Continued Consideration of a legal services agreement with Costanzo and Associates, PC

Mayor Franco stated that Council consensus was to continue this item until next Council Regular meeting.

DEPARTMENT REPORTS: City Manager Gallavan discussed the budget priorities workshop with Dr. Ryle, recommended some potential dates, and inquired about Council availability for scheduling. She also advised that a housing element update is forthcoming.

Assistant City Manager Moreno reported that budget calendars and schedules are now being prepared and will be presented to Council when completed.

Public Works Director Ferrell reported on the Peter Ringo Park project status, with final inspection and ribbon cutting scheduled for this week.

Fire Chief Petersen reported on the Fire Department's support with the recent Porterville tragedy.

Community Services Director Kirchner reported on T-ball donations from Me-n-Ed's Pizzeria, and the \$4.6 million grant funds awarded the City for the new Rockwell Park project. Mayor Franco requested a projected timeline for the varied phases of the project.

Acting Police Chief Dyck provided an update on a recent domestic incident.

COUNCIL REPORTS: Council member Avalos discussed the local and surrounding cities' responses to Measure L and the need to maintain an open and positive dialogue.

Council member Trujillo reported on the next upcoming SKF Sanitation District meeting and budget discussion, and will provide a report to Council following that meeting.

Council member Robertson reported on attending a Los Corazones lunch and Selma Unified School District board meeting. He also reminded all of the upcoming Boys and Girls Club luncheon and the final 2020 rabies vaccination clinic at Second Chance Animal Shelter.

Mayor Pro Tem Guerra reported on attending the Five Cities meeting, and discussed creating City parklets.

Mayor Franco reported on attending the following: First Friendship Baptist Church pastor appreciation service for Pastor Sean Battle, Chamber mixer, Chamber Crab Feed, Lions Club Students Speaker Contest, and Fresno Council of Governments meeting. He also discussed the upcoming Highway 99 Caltrans construction, and requested updates on the Nebraska Avenue project, the Amberwood development project, and the Engie Services report status.

ORAL COMMUNICATIONS: Rose Robertson welcomed Police Chief Gomez and reminded all of tomorrow's Selma Healthcare District Board meeting.

ADJOURNMENT: There being no further business, the meeting was adjourned at 7:37 p.m.

City of Selma
Regular City Council Meeting
March 2, 2020
Page 5
Respectfully submitted,

Reyna Rivera
City Clerk

CITY MANAGER'S/STAFF'S REPORT
REGULAR CITY COUNCIL MEETING DATE:

October 5, 2020

ITEM NO: 1.d.

SUBJECT: Consideration and Necessary Action on Resolution Authorizing Purchase of a Manitou 6,000lb Capacity 4-Wheel Drive 74 HP Tier IV Perkins Diesel Engine Rough Terrain Forklift and WP-4096 Multi Person Work Platform

RECOMMENDATION: Staff recommends that the City Council approve the Resolution authorizing the purchase of the Manitou 6,000 lb Capacity 4-Wheel Drive 74 HP Tier IV Perkins Diesel Engine Rough Terrain Forklift and WP-4096 Multi Person Work Platform from Quinn Lift at a price of \$88,509.08.

DISCUSSION: The Public Works Department is requesting that the Council approve the purchase of a new forklift and work platform, which was included as part of our Capital Improvement Plan and approved during the budget process. The Department currently has a 1993 forklift and it is unsafe to continue to operate this equipment. It has been difficult to find replacement parts for repairs. Public Works, Parks, Streets, and Building Divisions utilize the forklift on a daily basis.

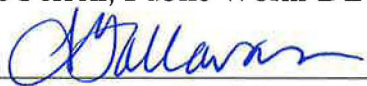
Staff did go out to bid on August 19, 2020 and received the following two bids:
Quinn Lift did submit the lowest bid.

1. Quinn Lift – \$88,509.08,
2. Cromer Equipment –\$92,999.96

<u>COST:</u> (Enter cost of item to be purchased in box below)		<u>BUDGET IMPACT:</u> (Enter amount this non-budgeted item will impact this years' budget in box below – if budgeted, enter NONE).
\$88,509.08		None
<u>FUNDING:</u> (Enter the funding source for this item in box below – if fund exists, enter the balance in the fund).		<u>ON-GOING COST:</u> (Enter the amount that will need to be budgeted each year in box below – if one-time cost, enter NONE).
Funding Source: Equipment: Parks, Streets, Buildings Fund Balance: General - FYE 2018-19 \$4,566,411 Streets - FYE 2018-19 \$188,610 Internal Services Building – FYE 2018-19 \$130,309		None

RECOMMENDATION: Staff recommends that the City Council approve the Resolution authorizing the purchase of the Manitou 6,000 lb Capacity 4-Wheel Drive 74 HP Tier IV Perkins Diesel Engine Rough Terrain Forklift and WP-4096 Multi Person Work Platform from Quinn Lift at a price of \$88,509.08.

_____/s/_____
Shane Ferrell, Public Works Director


Teresa Gallavan, City Manager

____10/1/2020____
Date
____9-30-20____
Date

RESOLUTION NO. 2020-__

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF SELMA AUTHORIZING PURCHASE OF FORKLIFT**

WHEREAS, the Public Works Department obtained two bids for the purchase of a new forklift to replace a forklift required for their operations that is nearly 30 years old; and

WHEREAS, the Council has reviewed the bids obtained by Public Works.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The forgoing recitals are true and correct.
2. The Council approves the purchase of one Manitou 6,000lb Capacity, 4-Wheel Drive, 74 HP Tier IV Perkins Diesel Engine Rough Terrain Forklift and WP-4096 Multi Person Work Platform from Quinn Lift at a price of \$88, 509.08.
3. The City Manager is authorized to execute a purchase agreement and all documents necessary to secure the purchase of the aforementioned forklift.

The forgoing Resolution was duly adopted by the City Council of the City of Selma at a regular meeting on the 5th day of October 2020 by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:

Louis Franco, Mayor

ATTEST:

Reyna Rivera, City Clerk



QUINN LIFT

Mr. Jess/ Shane
City of Selma
1710 TUCKER ST
SELMA, CA 93662

Dear Jess,

Quinn Lift would like to present for your consideration the following new Manitou Lift Truck Proposal with NJPA Pricing. We are extremely well respected for our commitment to customer satisfaction and service. With a modern, well-maintained fleet of service vehicles, a comprehensively-trained team of technicians, and an unbeatable parts inventory, Quinn Lift is prepared and excited to provide the lift truck needs of Visalia Unified School District. This lift truck will be equipped as follows:

Specifications:

(1) Model: Manitou (M30-4) 6,000lb Capacity 4-Wheel Drive 74 HP Tier IV Perkins Diesel Engine Rough Terrain Forklift.

- * Semi-Enclosed Cab
- * High Back Vinyl Seat
- * Side Shifting Fork Positioner
- * Rain Cap
- * 4 Hyd. Functions
- * 217" Lift Height, 120.28" Lowered Height – 3 Stage Full Visibility Triplex Mast
- * 58" Wide Carriage & LBR
- * Turf Tires front and rear
- * 48" Forks
- * Fire Extinguisher
- * Front & Rear LED Work Lights
- * Rotating Beacon

<u>Investment NJPA Pricing.....</u>	\$77,792.14
<u>Selma Sales Tax(8.475)</u>	<u>\$6,592.89</u>
Total	\$84,385.03

Thank you for the opportunity...
Sincerely,
QUINN LIFT

Adam Martin
Sales Representative

ALL PRICES QUOTED ARE SUBJECT TO AVAILABILITY, APPLICABLE TAXES, & CHANGE WITHOUT NOTICE.

MANITOU
GROUP



Quote

Customer: City Of Selma
Address: 1710 TUCKER ST
City & State: Selma, Ca 93662
Phone No: 559.898.6500
Fax No: 559.896.7147
Contact: Joe De Los Santos

Today's Date: 07/27/20

Machine: Vestil
Model No: WP-4096
Serial No:
Equip #:
Hours:

Description of Items	Parts Price	Labor	Total
WP-4096 Multi Person Work Platform (Cal)	\$2953.33		\$2953.33
Lead Time 6 Weeks			

Martin Sanchez

Product Support Rep.

Office: (559) 891-5406 **Cell:** (559) 647-2993

FAX: (562) 908-7346

E-Mail: msanchez@quinnlift.com

Sub-Total \$2953.33

Sales Tax \$322.20

Freight \$848.52

Total with tax \$4124.05

***Previous Authorized Field Repairs, Not Included in this Quote.**

Note: Estimate excludes travel time, mileage, freight, and environmental fee unless otherwise stated.

Thank You for giving Quinn Lift this opportunity to quote your service repair options. This estimate is based on labor rates, parts prices and condition of the machine on the date of the estimate indicated above. The customer will be informed of any reasons in labor rates, parts prices or additional work required, before the work is started. This estimate does not include freight, shipping charges or taxes, where applicable, and is good for ____ days from date indicated above.

Repairs Authorized By _____ Signed _____

Date _____

Fax Approved Repair Estimate To: (562) 908.7346

**CITY MANAGER'S/STAFF'S REPORT
REGULAR CITY COUNCIL MEETING DATE:**

October 5, 2020

ITEM NO: 1.e.

SUBJECT: Consideration and Necessary Action on Resolution Approving and Authorizing the City Manager to Execute an Agreement between the City and Navia Benefit Solutions, Inc. to provide Compliance services as selected below for the Employer's Affordable Care Act (ACA) Form 1094 and Form 1095, Annual Reporting Requirements (ACA Reporting)

RECOMMENDATION: Adopt Resolution Approving and Authorizing Execution of Agreement between City and Navia Benefit Solutions, Inc. to Provide ACA Compliance Services.

DISCUSSION: The attached is a standard agreement for compliance services related to ACA Reporting that are offered by Navia Benefit Solutions, Inc. Navia Benefit Solutions Inc., is a provider of those specialized services, which consists of the preparation of federal reports required by federal regulations adopted under the ACA. The agreement is for an indefinite term but may be terminated by either party on the giving of forty-days' notice. The services to be provided by Navia Benefit Solutions, Inc. consist of:

1. Initial implementation consultation to develop data gathering requirements. (Limited to 3 hours)
2. Monthly electronic data collection of employee benefits coverage and minimum benefit values.
3. Annual Form 1094 and 1095 production and reporting.
4. Electronic filing of annual Form 1094 and 1095.
5. On-going access to Administrative Solutions Inc. (ASI) experienced technical staff for assistance.
6. Annual monitoring of regulatory changes with specific employer communications.

<u>COST:</u> (Enter cost of item to be purchased in box below)		<u>BUDGET IMPACT:</u> (Enter amount this non-budgeted item will impact this years' budget in box below – if budgeted, enter NONE).
\$1,495.00, annually		None
<u>FUNDING:</u> (Enter the funding source for this item in box below – if fund exists, enter the balance in the fund).		<u>ON-GOING COST:</u> (Enter the amount that will need to be budgeted each year in box below – if one-time cost, enter NONE).
Funding Source: 1400 - General Fund Balance:		\$1,495.00

RECOMMENDATION: Adopt Resolution Approving and Authorizing Execution of Agreement between City and Navia Benefit Solutions, Inc. to Provide ACA Compliance Services.

<u>/s/</u> Christina Arias, Human Resources Manager	<u>10/1/2020</u> Date
<u>/s/</u> Teresa Gallavan, City Manager	<u>10/1/2020</u> Date

RESOLUTION NO. 2020-__R

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SELMA APPROVING
AND AUTHORIZING EXECUTION OF AGREEMENT FOR AFFORDABLE CARE
ACT REPORTING COMPLIANCE WITH NAVIA BENEFITS SOLUTIONS INC**

WHEREAS, the City of Selma is an employer within the meaning of the Affordable Care Act that provides health, medical and other similar benefits to employees. As a result, the City is subject to the provisions of the Federal Affordable Care Act (ACA) and regulations adopted to implement the ACA at 45 CFR Part 160 and 164 in addition to multiple other legal requirements applicable to employers that provide health or medical benefits to employees, including but not limited to the requirements of the Health Insurance Portability and Accountability Act (HIPAA); and

WHEREAS, compliance with the aforementioned laws require knowledge and skills that are not possessed by City of Selma staff, or typically, by employers at large, who rely on entities that provide for compliance services so that reporting and other requirements of the aforementioned laws are adhered to; and

WHEREAS, NAVIA Benefit Solutions Inc possess the skill and resources to provide the necessary compliance services and staff has reviewed and recommends approval of the Compliance Services Agreement attached and incorporated by reference as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The forgoing recitals are true and correct.
2. The City Council approves the Compliance Services Agreement with NAVIA Benefit Solutions Inc and authorizes its City Manager to execute the contract on behalf of the City of Selma.

The forgoing Resolution was duly adopted by the City Council of the City of Selma at a regular meeting on the 5th of October 2020 by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:

Louis Franco, Mayor

ATTEST:

Reyna Rivera, City Clerk

ACA Reporting

Reporting Only Fee Schedule

ACA Reporting

Affordable Care Act (ACA) Reporting is the action of filing required information to the IRS and sending copies to that company's employees. ACA Reporting requires employers to file this information annually. If these reports are not filed properly or in the given time frame, fines can become quite costly. If mismanaged, these fines can add up to millions of dollars.

Employers will be responsible for complying with the Affordable Care Act mandates. Whether you're an Applicable Large Employer or a self-insured business, we can help you prepare for and fulfill the upcoming requirements.

Proposed Services

- Initial implementation consultation to develop data gathering requirements. (Limited to 3 hours)
- Monthly electronic data collection of employee benefits coverage and minimum benefit values.
- Annual Form 1094 and 1095 production and reporting.
- Electronic filing of annual Form 1094 and 1095.
- On-going access to ASi experienced technical staff for assistance.
- Annual monitoring of regulatory changes with specific employer communications.

Reporting Only Administration Fee Schedule

One-Time Setup Fee	\$550
--------------------	-------

Annual Fee Per Form

Enterprise/Tier 1	Quote
Very Large/Tier 2	Quote
Large/Tier 3	\$7.00
Mid/Tier 4	\$7.50
Small/Tier 5	\$8.00

A La Carte Fee

Mailing (per form, includes postage)	\$2.00
Extension Form Filing Fee	\$150
ACA 1094/1095 Correction Fee	\$125/hour
PPACA Employee Benefit Notices	\$495
Hourly Service Fee (non-IRS audit services)	\$125/hour

Unparalleled customer service

2X A survey sent to 13K clients and 500K participants ranked Navia 2X higher than the industry average for customer satisfaction.

10+ Navia's clients stay an average of 10+ years

98% 98% of all issues are resolved on the first call

30 Employers/participants wait less than 30 seconds before talking with a live person

99% 99% of all calls are answered on the first attempt

U.S. 100% US-based, live customer support

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Auditing

NAVIA BENEFIT SOLUTIONS, INC. COMPLIANCE SERVICES AGREEMENT

The undersigned Employer ("Employer") hereby retains Navia Benefit Solutions, Inc. ("Navia") to provide compliance services (the "Services"), as selected below for the Employer's ACA Form 1094 and Form 1095 Annual Reporting Requirements ("ACA Reporting") upon and subject to the following terms and conditions.

Navia shall provide the Services for the Employer's ACA Reporting. The various Services and the fee ("Fees") are described above. Where applicable, all Fees shall be determined according to the Schedule. Navia shall have the right to modify the Schedule at any time, provided, however, that Navia shall give the Employer notice of the intended modification sixty (60) days prior to the date such modification shall become effective. Either party may cancel this Agreement by giving the other party advance written notice at least forty-five (45) days prior to the date such cancellation shall become effective. All invoices submitted by Navia are due and payable upon receipt. Any amount unpaid beyond thirty (30) days will be subject to a late payment charge.

The Employer shall furnish Navia with all information required by Navia to perform the Services hereunder. Navia shall rely entirely and conclusively upon such information furnished by the Employer, except to the extent that it may be contrary to the provisions of the Plan or applicable law. Navia shall have no duty to investigate the source or accuracy of such information or to question any action of the Employer, its agents, or any trustee of the Plan. The Employer hereby agrees that payment of all Fees, penalties, interest and other costs imposed by the Internal Revenue Service, Department of Labor, or any other governmental agencies resulting from the delay, negligence, neglect or breach of this Agreement by Employer are the sole responsibility of the Employer and/or Plan.

The Employer hereby agrees that Navia shall not be liable to the Employer, the Plan, any Participants of the Plan or any other person for any damages, costs or expenses resulting from any error in administration, or any matter of the Plan or its Trust resulting from any act, omission, negligence or default of the Employer or administrator, or any other advisors. The Employer further agrees to save, defend, indemnify and hold harmless Navia and its owners, directors, agents and employees from any costs, damages, expenses and/or other losses resulting from administration of the Services, claims of Employer's Participants, including without limitation all costs or attorney's fees and other costs of litigation and/or arbitration. The Employer also agrees that Navia shall not be liable to Employer, Plan or any Participant of the Plan for any losses, damages or other expenses, direct or indirect resulting from the negligence, neglect or breach of this Agreement by employer.

The undersigned, on behalf of the Employer, hereby agrees to retain Navia to perform the Services selected below:

PLAN TYPE: ACA REPORTING

☐ ACA Reporting Analysis Service
☒ ACA Reporting Annual Administration
☐ ACA Reporting Termination Services

☐ ACA Reporting Takeover
☐ Other Services

Accepted for Navia Benefit Solutions, Inc.
 By: Shelene Jackson
 Title: Compliance Services Manager
 Date: September 18, 2020

Accepted for Employer
 Employer Name: _____
 By: _____
 Title: _____
 Date: _____

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“BAA”) is incorporated into and made part of the Compliance Services Agreement. The responsibilities of the Parties set forth in this BAA are in addition to any responsibilities set forth in the Agreement. If there is a conflict between this BAA and any other part of the Compliance Services Agreement with respect to the subject matter of this BAA, this BAA will control. In all other conflicts, the Compliance Services Agreement controls. This BAA is intended to comply with the Business Associate Agreement provisions set forth in 45 CFR §§ 164.314 and 164.504(e), and any other applicable provisions of 45 CFR parts 160 and 164, issued pursuant to the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 as amended, including by the Health Information Technology for Economic & Clinical Health Act of the American Recovery and Reinvestment Act of 2009 (‘ARRA’), (collectively “HIPAA”).

Navia recognizes that in the performance of the Compliance Services Agreement it may have access to, create, and/or receive from the Benefit Plan(s) or on its behalf Protected Health Information (“PHI”). For purposes herein, PHI shall have the meaning given to such term in 45 CFR § 164.103, limited to the information created or received from the Benefit Plan(s) or on its behalf by Navia. Capitalized terms shall have the respective meaning set forth below or in the BAA unless a different meaning shall be clearly required by the context. In addition, other capitalized terms used in this BAA but not defined herein or in the Compliance Services Agreement, shall have the same meaning as those terms are defined under HIPAA. This BAA shall be automatically amended to incorporate changes by Congressional act or by regulations of the Secretary that affect Business Associate or Covered Entity’s obligations under this Agreement.

1. Definitions.

- 1.1. Breach. “Breach” shall have the same meaning as the term “breach” in 45 CFR 164.402.
- 1.2. Business Associate. “Business Associate” shall mean Navia Services, Inc. (“Navia”).
- 1.3. Covered Entity. “Covered Entity” shall mean the Benefit Plan(s).
- 1.4. Electronic Protected Health Information. “Electronic Protected Health Information” (“ePHI”) shall have the same meaning as the term “electronic Protected Health Information” in 45 CFR 160.103, limited to the information created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity.
- 1.5. HHS. “HHS” shall mean the Department of Health and Human Services.
- 1.6. HIPAA. “HIPAA” shall mean the Health Insurance Portability and Accountability Act of 1996.
- 1.7. HITECH. “HITECH” shall mean the Health Information Technology for Economic and Clinical Health Act.
- 1.8. Individual. “Individual” shall have the same meaning as the term “individual” in 45 CFR 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- 1.9. Privacy Rule. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
- 1.10. Protected Health Information. “Protected Health Information” (“PHI”) shall have the same meaning as the term “protected health information” in 45 CFR 160.103, limited to the information created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity.
- 1.11. Required by Law. “Required by Law” shall have the same meaning as the term “Required by Law” in 45 CFR 164.103.
- 1.12. Secretary. “Secretary” shall mean the U.S. Secretary of the Department of Health and Human Services or his or her designee.

- 1.13. Security Incident. "Security Incident" shall have the same meaning as the term "security incident" in 45 CFR 164.304.
- 1.14. Security Rule. "Security Rule" shall mean the Security Standards and Implementation Specifications at 45 CFR Part 160 and Part 164, subparts A and C.
- 1.15. Standards for Electronic Transactions Rule. "Standards for Electronic Transactions Rule" means the final regulations issued by HHS concerning standard transactions and code sets under the Administration Simplification provisions of HIPAA, 45 CFR Part 160 and Part 162.
- 1.16. Subcontractor. "Subcontractor" shall have the same meaning as the term "subcontractor" in 45 CFR 160.103.
- 1.17. Unsecured Protected Health Information. "Unsecured Protected Health Information" shall have the same meaning given the term "unsecured protected health information" in 45 CFR 164.402.

2. **Obligations and Activities of Business Associate**

- 2.1. Business Associate agrees to not use or disclose PHI other than as permitted or required by this BAA or as Required by Law.
- 2.2. Business Associate agrees to take reasonable efforts to limit its use and disclosure of, and requests for, PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request. The foregoing minimum necessary standard does not apply to: 1) disclosures or requests by a health care provider for treatment purposes; (2) disclosures to the Individual who is the subject of the information; (3) uses or disclosures made pursuant to an Individual's authorization; (4) uses or disclosures required for compliance with HIPAA; (5) disclosures to HHS when disclosure of information is required under the Privacy Rule for enforcement purposes; (6) uses or disclosures that are required by other law.
- 2.3. Business Associate agrees to develop, implement, maintain, and use appropriate administrative, technical, and physical safeguards to protect the privacy of PHI and comply with applicable requirements under the Security Rule.
- 2.4. Business Associate shall notify Covered Entity of any Breach of Unsecured PHI of which it becomes aware. Such notice shall include, to the extent possible, the information listed in Section 2.6. A Breach shall be treated as discovered as of the first day on which such Breach is known, or by exercising reasonable diligence would have been known, to any person, other than the individual committing the Breach, who is an employee, officer, or other agent of Business Associate.
- 2.5. Notice shall be made without unreasonable delay and in no case later than sixty (60) calendar days after the discovery of a Breach by Business Associate.
- 2.6. Notice of a Breach shall include, to the extent possible the following:
 - 2.6.1. Identification of each individual whose Unsecured PHI has been or is reasonably believed to have been accessed, acquired, used, or disclosed as a result of the breach.
 - 2.6.2. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known.
 - 2.6.3. A description of the types of Unsecured PHI that were involved in the Breach (such as full name, Social Security number, date of birth, home address, or account number).
 - 2.6.4. The steps Individuals should take to protect themselves from potential harm resulting from the Breach.
 - 2.6.5. A brief description of any action taken to investigate the Breach, mitigate losses, and to protect against any further Breaches.

- 2.6.6. Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.
- 2.7. If a law enforcement official determines that a notification or notice would impede a criminal investigation or cause damage to national security, such notification, notice or posting shall be delayed in accordance with 45 CFR 164.412.
- Upon Covered Entity's request, Business Associate will provide notice of Breach to the Individual(s) affected and such notice shall include, to the extent possible, the information listed in 2.6., unless, upon occurrence of a Breach, Covered Entity requests to disseminate or Navia and Covered Entity agree that Covered Entity will disseminate the notice(s). Any notice provided by Covered Entity to the Individual(s) shall comply with the content requirements listed in section 2.6., as well as any requirements provided under HIPAA, HITECH, and other applicable government guidance. Any notice required to be provided to HHS will be provided by Covered Entity. Business Associate agrees to report to Covered Entity any Use or Disclosure of PHI not provided for by this BAA and/or any Security Incident of which it becomes aware, provided that notice is hereby deemed given for Unsuccessful Security Incidents and no further notice of such Unsuccessful Security Incidents shall be given. For purposes of this Section, "Unsuccessful Security Incidents" mean, without limitation, pings and other broadcast attacks on Navia's firewall, port scans, unsuccessful log-on attempts, denial of service attacks, and any combination of the above, as long as no such incident results in unauthorized access, acquisition, Use, or Disclosure of Protected Health Information. Notification(s) under this Section, if any, will be delivered to contacts identified by the Employer by any means Navia selects, including through e-mail. Navia's obligation to report under this Section is not and will not be construed as an acknowledgement by Navia of any fault or liability with respect to any Use, Disclosure, or Security Incident.
- 2.8. Business Associate shall require each of its subcontractors, agents, or brokers, that creates, receives, maintains, or transmits PHI on behalf of Covered Entity to enter into a written BAA with Business Associate that provides satisfactory assurances that the subcontractor will appropriately safeguard that information, including without limitation the subcontractor's agreement to be bound by the same restrictions and conditions that apply to Business Associate with respect to such information.
- 2.9. Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI relating to the use and disclosure of PHI available to the Secretary, within ten (10) Business Days after receipt of written request or otherwise as designated by the Secretary for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule
- 2.10. Business Associate agrees to document disclosures of PHI and information related to such disclosures as required for Covered Entity to respond to a written request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528. Business Associate will not be obligated to record disclosures of PHI or otherwise account for disclosures of PHI if neither Covered Entity nor Business Associate is required to account for such disclosures pursuant to the Privacy Rule.
- 2.11. Business Associate agrees to provide to Covered Entity or, upon Covered Entity's request, to an Individual, within ten (10) Business Days after receipt of written request, information collected in accordance with Section 2.10 of this BAA, in order to permit Covered Entity to respond to a written request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.
- 2.12. Business Associate agrees to provide access, at the request of Covered Entity and within ten (10) Business Days after receipt of written request, to PHI in the custody

and control of Business Associate in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR 164.524. If PHI is maintained in a Designated Record Set electronically, and an electronic copy of such PHI is requested, Business Associate will provide an electronic copy in the form and format requested if it is readily producible in such form and format. If it is not readily producible in such format, Business Associate will work with the Covered Entity or, at the Covered Entity's request, the individual to determine an alternative form and format that enable Covered Entity to meet its electronic access obligations under 45 CFR 164.524.

- 2.13. Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set in the custody or control of Business Associate within ten (10) Business Days after receiving written request from the Covered Entity or, upon Covered Entity's request, as requested in writing by an Individual pursuant to 45 CFR 164.526.
- 2.14. In the event that Business Associate transmits or receives any Covered Electronic Transaction on behalf of the Covered Entity, it shall comply with all applicable provisions of the Standards for Electronic Transactions Rule to the extent Required by Law, and shall ensure that any subcontractors or agents that assist Business Associate in conducting Covered Electronic Transactions on behalf of the Covered Entity agree in writing to comply with the Standards for Electronic Transactions Rule to the extent Required by Law.
- 2.15. Business Associate shall not directly or indirectly receive payment in exchange for any PHI of an Individual unless Covered Entity or Business Associate received a valid authorization from the Individual, in accordance with 45 CFR 164.508, unless permitted under the HIPAA rules.
- 2.16. Business Associate shall not use PHI for marketing purposes without a valid authorization from the affected Individuals, unless such communication is permitted under the HIPAA rules
- 2.17. Business Associate shall not use or disclose genetic information for underwriting purposes in violation of the HIPAA rules.

3. **Permitted Uses and Disclosures by Business Associate**

- 3.1. Except as otherwise limited in this BAA, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity related to the Compliance Services Agreement between Business Associate and Covered Entity.
- 3.2. Except as otherwise limited in this BAA, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that such disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instance of which it is aware in which the confidentiality of the information has been Breached.
- 3.3. Except as otherwise limited in this BAA, Business Associate may use PHI to provide Data Aggregation Services to Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B).
- 3.4. Except as otherwise limited in this BAA, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.
- 3.5. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 164.502(j)(1).

- 3.6. Except as expressly permitted by this BAA, Business Associate shall not use or disclose PHI in any manner that would violate the requirements of the Privacy Rule if done by Covered Entity.

4. Obligations of Covered Entity and Employer

- 4.1. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- 4.2. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- 4.3. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- 4.4. Employer acknowledges and agrees that Business Associate may disclose PHI in its possession to Employer's workforce as necessary to administer the Plan(s). Employer shall timely notify Business Associate in writing of any terminations or changes of such employees. Employer shall indemnify and hold harmless Business Associate and its employees for any and all liability Business Associate may incur as a result of any improper use or disclosure of PHI by or caused the Plan, Employer, or Employer's Workforce.

5. Permissible Requests by Covered Entity

- 5.1. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except for uses or disclosures for the purposes of data aggregation, management, and administrative activities of Business Associate.

6. Retention

It is agreed that due to the manner in which PHI is retained and the retention requirements of the Internal Revenue Service, returning or destroying all of the PHI received from Covered Entity or created or received by Navia on behalf of Covered Entity, is infeasible. Therefore, Navia shall extend the protections of this Agreement to such PHI and shall limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Navia maintains such PHI.

7. Miscellaneous

Definitions. Terms used, but not otherwise defined in this Agreement shall have the meaning specified under HIPAA, including its statute, regulations, and other official government guidance.

Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.

Amendment. This Agreement shall automatically amend to incorporate changes by Congressional act or by regulations of the Secretary that affect Business Associate or Covered Entity's obligations under this Agreement.


Survival. The respective rights and obligations of Business Associate under this Agreement shall survive the termination of the term of this Agreement.

No Third-Party Rights. Nothing expressed or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and their respective successors or assigns any rights, remedies, obligations, or liabilities whatsoever.

Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington to the extent not preempted by the Privacy and Security Rules or other applicable federal law.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective as of the date first stated above.

Navia Benefit Solutions, Inc.

By: 
Tina Boyd
Title: Privacy Officer
Date: 9/18/2020

Employer Name

By: _____
Title: _____
Date: _____

**CITY MANAGER'S/STAFF'S REPORT
CITY COUNCIL MEETING:**

October 5, 2020

ITEM NO:

1.f.

SUBJECT:

Consideration of the Notice of Completion for Community Development Block Grant (CDBG) Project No. 18651, Storm Drain Improvement Project

RECOMMENDATION: Approve the Notice of Completion for CDBG Project No. 18651, Storm Drain Improvement Project, and authorize the City Manager to execute same.

DISCUSSION: The Engineering Department is requesting that the City Council approve the Notice of Completion for the above referenced project. All work has been completed, has met all design standards, and has been approved by the City Engineer.

The project consisted of the following:

Construction of new storm drain facilities to divert storm water from two lift stations to the storm basin at Valley View.

It is hereby requested that the Notice of Completion be executed and the final payment, plus retention on this project be released to the contractor.

RECOMMENDATION: Approve the Notice of Completion for CDBG Project No. 18651, Storm Drain Improvement Project, and authorize the City Manager to execute same.

/s/ _____
Daniel K. Bond, City Engineer

10/1/2020

Date

/s/ _____
Teresa Gallavan, City Manager

10/1/2020

Date

Recording Requested By
City of Selma

When Recorded Return To:
City of Selma - City Clerk
1710 Tucker Street
Selma, CA 93662

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document."

THIS SPACE IS FOR RECORDING INFORMATION ONLY

NOTICE OF COMPLETION

NOTICE IS HEREBY GIVEN that the undersigned, City of Selma, a Municipal Corporation, is the owner of the real estate situated in the City of Selma, County of Fresno, State of California, and described as follows, to-wit:

Storm Drain Improvement Project; CDBG No. 18651

That the address of said owner is City Hall, 1710 Tucker Street, Selma, California;

That the nature of the title of the owner to said real estate is that of fee simple and/or easement;

That the name of the Contractor is Dawson-Mauldin LLC, 1071 E Nebraska, Selma, CA 93662

That on the 18th of September, 2020, the Contract for the work on the above-described property was actually completed.

By: _____
Teresa Gallavan, City Manager
Owner

I, Teresa Gallavan, Selma City Manager, being duly sworn says:

That I am the agent of the Owner of the property described in the foregoing Notice; that I have read the foregoing Notice and know the contents thereof, and that the same is true of my own knowledge.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document."

CITY OF SELMA, a Municipal Corporation

By: _____
Teresa Gallavan, City Manager
Owner

State of California
County of Fresno

On October 5, 2020, before me, Reyna Rivera, City Clerk, personally appeared Teresa Gallavan, City Manager, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument. I certify under PENALTY OF PERJURY under laws of the State of California the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Reyna Rivera, Selma City Clerk

(Acknowledgment taken by City Clerk pursuant to California Civil Code Section 1181)

**CITY MANAGER'S/STAFF'S REPORT
CITY COUNCIL MEETING**

October 5, 2020

1.g.

SUBJECT: Consideration of a Resolution in support for the SR 99/Mt. View feasibility study and commitment by the City of Selma to pursue local, regional, state and federal funding and direction to pursue future improvements

RECOMMENDATION: Council approve the Resolution in support for the SR 99/Mt. View feasibility study and a commitment to pursue future project improvements.

DISCUSSION: The Fresno Council of Governments (FCOG), the Tulare County Association of Governments (TCAG), the City of Kingsburg, and the City of Selma in cooperation with Caltrans conducted a feasibility study that concluded in May 2019 to evaluate long term transportation improvements at the Mountain View Avenue/ SR 99 interchange. Four alternatives were presented to address the interchange issues.

On April 20, 2020 and September 22, 2020, the City Council reviewed and discussed a resolution of support to future improvements and to pursue funding for said improvements. There were a number of questions about the process and costs associated with furthering the SR 99/Mt. View overpass project as well as two other potential projects. To address those questions, our partners at FCOG and Caltrans have agreed to continue the discussion on the potential projects known as the Dinuba Avenue Overpass and the Floral Avenue Overpass. Staff will continue to update Council on the status of the three projects.

RECOMMENDATION: Council approve the Resolution in support for the SR 99/Mt. View feasibility study and a commitment to pursue future project improvements.

/s/

Joey Daggett, City Engineer

10/1/2020

Date


Teresa Gallavan, City Manager

9-30-20
Date

RESOLUTION NO. 2020 - __R

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SELMA IN SUPPORT FOR THE
SR 99/MT. VIEW FEASIBILITY STUDY
AND COMMITMENT BY THE CITY OF SELMA TO PURSUE LOCAL, REGIONAL, STATE
AND FEDERAL FUNDING SOURCES TO PURSUE TRANSPORTATION IMPROVEMENTS**

WHEREAS, the Fresno Council of Governments (FCOG), the Tulare County Association of Governments (TCAG), the City of Kingsburg, and the City of Selma in cooperation with Caltrans have conducted a feasibility study to determine potential near, mid, and long term transportation improvements at the Mountain View Avenue/ SR 99 interchange; and

WHEREAS, the purpose of the study was to determine the existing and future transportation needs at the State Route 99/ Mt. View interchange and to develop alternatives to address geometric deficiencies and to improve the safety and operations at the interchange; and

WHEREAS, the SR 99/Mt. View Avenue Feasibility Study identifies near-, mid- and long-term alternatives and recommends improvement alternatives for future traffic demands at the interchange, and is consistent with the Cities of Kingsburg and Selma General Plans; and

WHEREAS, The SR 99/Mt. View Avenue Feasibility Study identified three mid-term alternatives to address needs of the subject interchange as far as 2045 and one long-term alternative (L-9);

NOW, THEREFORE, BE IT RESOLVED, that the City of Selma supports an alternative that would best address the identified deficiencies including the improvement of traffic operations and best align with long term alternative (L-9) based on the cost-benefit assessment developed as part of the feasibility study and is committed to seeking local, regional, state and federal funding to further the project development process and ultimately construct improvements at the Mountain View Avenue/SR 99 interchange.

PASSED, APPROVED and ADOPTED at a Regular Meeting of the City Council of the City of Selma on this ____ day of _____, 2020, by the following roll call vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:

Louis Franco, Mayor

ATTEST:

Reyna Rivera, City Clerk

CHECK REGISTER REPORT

CHECK NUMBER	CHECK DATE	STATUS	VENDOR NAME	CHECK DESCRIPTION	CATEGORY	AMOUNT
75878	09/25/2020	Printed	A&S PUMP SERVICE	SERVICE PUMP AT LINCOLN PARK		181.78
75879	09/25/2020	Printed	ADVENTIST HEALTH	AMBULANCE OVERPAYMENT REIMB		140.42
75880	09/25/2020	Printed	AMERICAN AMBULANCE	OCTOBER 2020 PAYMENT		125,000.00
75881	09/25/2020	Void				
75882	09/25/2020	Void				
75883	09/25/2020	Printed	ARAMARK UNIFORM	UNIFORMS/TOWELS/FIRST AID KITS 8/27-9/17/20		1,161.87
75884	09/25/2020	Printed	AT&T	TELEPHONE -SEPTEMBER 2020		21.45
75885	09/25/2020	Printed	AT&T	TELEPHONE 8/12-9/11/20		63.68
75886	09/25/2020	Printed	AT&T MOBILITY	TELEPHONE -MDT'S 8/1-8/31/20		437.91
75887	09/25/2020	Printed	BANNER PEST CONTROL INC	PEST CONTROL -SEPTEMBER 2020		441.00
75888	09/25/2020	Printed	JAY WESLEY BROCK / TOP DOG TRAINING CENTER	K9 MAINTENANCE TRAINING 9/7/20		180.00
75889	09/25/2020	Printed	CALIFORNIA STATE CONTROLLERS	AUDIT CONFIRMATION FEE		150.00
75890	09/25/2020	Printed	CALIFORNIA WATER SERVICE	WATER SERVICE -AUGUST 2020		23,780.74
75891	09/25/2020	Printed	CDCE INCORPORATED	MDT MONTHLY LEASE -PD		2,380.00
75892	09/25/2020	Printed	CENTRAL CALIFORNIA FOOD BANK	PLASTIC BAGS FOR COMMODITIES		46.96
75893	09/25/2020	Printed	CENTRAL SANITARY SUPPLY	JANITORIAL SUPPLIES		733.29
75894	09/25/2020	Printed	CISCO SYSTEMS CAPITAL CRP	LEASE -PHONE SYSTEM/BACKUP 9/15- 10/14/20		3,280.05
75895	09/25/2020	Printed	CHRISTOPHER CISNEROS	PARAMEDIC RENEWAL REIMB		275.00
75896	09/25/2020	Printed	CITY OF SANGER FIRE DEPARTMENT	CONSULTING FOR IGT -JULY 2020		560.50
75897	09/25/2020	Printed	COUNTY OF FRESNO-COMM HEALTH D	DISPATCHING SERVICES 7/1-9/30/20		3,984.50
75898	09/25/2020	Printed	CSJVRMA	2020/2021 2ND QTR DEPOSIT		206,835.00
75899	09/25/2020	Printed	DATA TICKET, INC.	PARKING CITATION PROCESSING APR-JULY 20		226.95
75900	09/25/2020	Printed	DATAPATH LLC	NETCARE & ON SITE SUPPORT -SEPT 20, SERVER UPGRADE, PD MOVE TO NEW BUILDING	PARTIAL PDSA	21,258.00
75901	09/25/2020	Printed	DAWSON-MAULDIN LLC	PROG PAY#2 CDBG 18651	G	171,304.95
75902	09/25/2020	Printed	DEPARTMENT OF JUSTICE	FINGERPRINTS -JUNE 20		32.00
75903	09/25/2020	Printed	DOOLEY ENTERPRISES, INC.	AMMUNITION		1,555.57
75904	09/25/2020	Printed	EMPLOYMENT DEVELOPMENT DEPT.	SUI QTRLY PMNT 4/1-6/30/20		2,475.00
75905	09/25/2020	Printed	ENGIE SERVICES U.S.INC.	PDA ASSESSMENT FEE		20,000.00
75906	09/25/2020	Printed	ENTENMANN-ROVIN CO.	COMMANDER'S BADGE & 5 POLICE BADGES		692.77
75907	09/25/2020	Void				
75908	09/25/2020	Printed	FAMILY HEALTHCARE NETWORK	DRUG TESTS -ADMIN, COMM DEV, FIRE, POLICE, PW		585.25
75909	09/25/2020	Printed	FINANCIAL PACIFIC LEASING	PD VEHICLES LEASE PAYMENT, 2019 DANKO WILDLAND VEHICLE LEASE		75,149.37
75910	09/25/2020	Printed	FIVE CITIES EDA	1ST QUARTER DUES JUL-SEPT 20		1,387.72
75911	09/25/2020	Printed	FRESNO CITY COLLEGE	POST FTO TRAINING COURSE	R	276.00
75912	09/25/2020	Printed	FRESNO COUNTY EDC	HIGH SPEED RAIL CENTRAL VALLEY TRAINING CENTER -JUL & AUG 20		23,808.92
75913	09/25/2020	Printed	FRESNO OXYGEN	OXYGEN RENTALS		108.38
75914	09/25/2020	Printed	GAR BENNETT LLC	IRRIGATION SUPPLIES -LINCOLN PARK		37.36
75915	09/25/2020	Printed	GATEWAY ENGINEERING, INC.	STORM DRAIN IMPROVEMENT CONSTRUCTION	G	4,150.00
75916	09/25/2020	Printed	GCS ENVIRONMENTAL EQUIPMENT	GUTTER BROOMS FOR SWEEPERS UNIT#1315 & 1318		3,675.26
75917	09/25/2020	Printed	JESUS GOMEZ	PAINT FOR STATION REIMB		102.73
75918	09/25/2020	Printed	GOVERNMENT REVENUE SOLUTIONS	SUTA SERVICES QTR END 3/31/20		911.70
75919	09/25/2020	Printed	HEALTHEDGE ADMINISTRATORS INC.	DENTAL 9/9/20		1,355.10
75920	09/25/2020	Printed	HEALTHWISE SERVICES, LLC.	MEDICAL WASTE SERVICES		429.00
75921	09/25/2020	Printed	HENRY SCHEIN INC.	MEDICAL SUPPLIES		978.41
75922	09/25/2020	Printed	RAUL R HERRERA JR	POLYGRAPH SERVICES 8/13-8/25/20		800.00
75923	09/25/2020	Printed	J'S COMMUNICATION INC.	SERVICE AGREEMENT 9/1-9/30/20		606.00
75924	09/25/2020	Printed	JOHNSON CONTROLS SECURITY	ALARM SERVICES 10/1-12/31/20		3,263.82
75925	09/25/2020	Printed	CHERYL KAIN	FLOWERS CONDOLENCES		75.24

CHECK REGISTER REPORT

CHECK NUMBER	CHECK DATE	STATUS	VENDOR NAME	CHECK DESCRIPTION	CATEGORY	AMOUNT
75926	09/25/2020	Printed	MICHAEL KAIN	MEDICAL PREMIUM REIMB -OCT 20		1,211.15
75927	09/25/2020	Printed	KATCH ENVIRONMENTAL INC.	PROGRESS PAYMENT #13 NEW POLICE STATION	PDSA	289,721.19
75928	09/25/2020	Printed	KENT M KAWOGOE, PHD	PRE-EMPLOYMENT PSYCHOLOGICAL EXAMS -PD		1,025.00
75929	09/25/2020	Printed	JEFF KESTLY	MEDICAL PREMIUM REIMB -OCT 20		201.97
75930	09/25/2020	Printed	KINGS INDUSTRIAL OCCUPATION	PRE-EMPLOYMENT PHYSICAL -PD		603.00
75931	09/25/2020	Printed	KOEFRAN INDUSTRIES, INC.	EMPTY ANIMAL CONTROL FREEZER		163.86
75932	09/25/2020	Printed	KRAZAN & ASSOCIATES, INC.	STORM DRAIN IMPROVEMENT COMPACTION TEST, NEW POLICE STATION CONSTRUCTION	G & PDSA	3,028.00
75933	09/25/2020	Printed	TIM J LAW / LAW & ASSOCIATES	LAW ENFORCEMENT BACKGROUND		700.00
75934	09/25/2020	Printed	LEGACY AIR HVAC LLC	BUSINESS LIC OVERPAYMENT REIMB		40.00
75935	09/25/2020	Printed	LIFE-ASSIST INC.	MEDICAL SUPPLIES		195.48
75936	09/25/2020	Printed	STEVEN LEE MCINTIRE	MEDICAL PREMIUM REIMB -OCT 20		1,687.69
75937	09/25/2020	Printed	METRO UNIFORM	POLICE/FIRE REVOLVING ACCT	R	1,750.62
75938	09/25/2020	Printed	MOTOROLA SOLUTIONS, INC.	NEW POLICE STATION EQUIPMENT SOFTWARE & LICENSE	PDSA	92,618.53
75939	09/25/2020	Printed	OFFICE DEPOT, INC.	OFFICE SUPPLIES		160.58
75940	09/25/2020	Printed	PG&E	UTILITIES -SEPTEMBER 2020		4,203.30
75941	09/25/2020	Printed	PG&E	UTILITIES -SEPTEMBER 2020		11.77
75942	09/25/2020	Printed	PG&E	UTILITIES -SEPTEMBER 2020		45.27
75943	09/25/2020	Printed	PG&E	UTILITIES -SEPTEMBER 2020		32,249.32
75944	09/25/2020	Printed	PG&E	UTILITIES -SEPTEMBER 2020		125.19
75945	09/25/2020	Printed	PG&E	UTILITIES -SEPTEMBER 2020		15,796.74
75946	09/25/2020	Printed	PITNEY BOWES INC.	POSTAGE MACHINE RENTAL-PD		317.88
75947	09/25/2020	Printed	PURCHASE POWER	POSTAGE REFILL -CH		330.00
75948	09/25/2020	Printed	QUAD KNOPF, INC.	ON-CALL PLANNING SERVICES 8/9-9/5/20		15,668.70
75949	09/25/2020	Printed	QUINN POWER SYSTEMS	RENTED LIFT TO MOVE CHARGING STATION		371.48
75950	09/25/2020	Printed	ROSE RANGEL	BILINGUAL TESTING		100.00
75951	09/25/2020	Printed	REVENUE COST SPECIALISTS LLC.	PREPARE COST ALLOCATION PLAN		8,000.00
75952	09/25/2020	Printed	DANIEL ANTHONY RIVAS	HOTEL ROOMS FOR STRIKE TEAM	R	2,185.05
75953	09/25/2020	Printed	SCOTT SANDERS	MEDICAL PREMIUM REIMB -OCT 20		1,444.98
75954	09/25/2020	Printed	SECOND CHANCE ANIMAL SHELTER	MONTHLY SUPPORT -OCT 2020		7,925.80
75955	09/25/2020	Printed	SELMA UNIFIED FOOD SERVICES	SENIOR MEALS 8/10-8/31/20		8,066.25
75956	09/25/2020	Printed	SPARKLETTES	WATER SERVICE		114.62
75957	09/25/2020	Printed	STERICYCLE, INC.	STERI-SAFE OSHA COMPLIANCE		172.61
75958	09/25/2020	Printed	STRYKER SALES CORPORATION	POWER LOAD GURNEY		24,931.29
75959	09/25/2020	Printed	SUN BADGE CO	BADGES FOR CAPTAINS, ENGINEER		861.31
75960	09/25/2020	Printed	SUN LIFE	EMPLOYEE INSURANCE -OCT 20		1,569.91
75961	09/25/2020	Printed	SUNCREST BANK	KATCH ENVIRONMENTAL RETENTION		70,439.54
75962	09/25/2020	Printed	SUPERIOR VISION INSURANCE INC	VISION INSURANCE -OCT 20		4,237.24
75963	09/25/2020	Printed	T-MOBILE USA, INC.	LAW ENFORCEMENT PING		102.00
75964	09/25/2020	Printed	TAG-AMS, INC.	EMPLOYEE DRUG TESTING		184.00
75965	09/25/2020	Printed	THE CRISCOM COMPANY	SEWER INFRASTRUCTURE -OCT 20		4,500.00
75966	09/25/2020	Printed	TOWNSEND PUBLIC AFFAIRS, INC.	CONSULTING FEES -SEPTEMBER 20		3,500.00
75967	09/25/2020	Printed	TUTTLE & MCCLOSKEY	GENERAL LEGAL FEES -AUG 2020		5,325.00
TOTAL						1,310,764.97

Grant: G PD State Appropriation: PDSA (457) Reimbursement: R

WIRE/EFT						
09/25/20	TENNSMITH		SUPPLIES FOR TRAINING CENTER			3,321.10

CHECK REGISTER REPORT

CHECK NUMBER	CHECK DATE	STATUS	VENDOR NAME	CHECK DESCRIPTION	CATEGORY	AMOUNT
SUCCESSOR AGENCY						
121	09/24/2020	Printed	U.S. BANK ST PAUL	SELMA RDA 2010A BOND TRUSTEE		2,585.00
TOTAL						2,585.00

PAYROLL TRANSACTIONS

CHECK REGISTER

Date	Check No.	Amount
9/18/2020	116240-116247	\$3,669.65

Remittance Checks

Date	Check No.	Amount
9/18/2020	116248-116256	\$25,985.72

ACH Payment

Date	Description	Amount
9/18/2020	PR SEPT 18 20	\$262,239.55

**CITY MANAGER'S/STAFF'S REPORT
CITY COUNCIL MEETING:**

October 5, 2020

ITEM NO:

2.

SUBJECT: Consideration of a Resolution approving a request to enter into an Agreement with Vanir Construction Management, Inc. for Project Management of the Rockwell Park Project.

DISCUSSION: A Request for Proposals (RFP) was sent out for a Project Manager to oversee the development of the Rockwell Park Project. Staff received five RFP's for consideration:

Precision Civil Engineering, Inc.	\$ 79,800.00
CPM California Professional Management	\$292,460.00
Vanir Construction Management	\$362,600.00
Griffin Structures	\$561,170.00
Ghirardelli Associates	\$966,563.42

From the review of the proposals, experience and references, Vanir Construction Management, Inc., Griffin Structures and CPM California Professional Management firms were interviewed by Teresa Gallavan, City Manager, Isaac Moreno, Assistant City Manager/Finance Director and Mikal Kirchner, Recreation and Community Services Director.

Based on the review and information gathered from the proposals, references and interview process, staff is recommending Vanir Construction Management, Inc. The Rockwell Park Project is receiving \$4,416,000.00 in grant funds to complete a 28-acre park. Funds to cover the Project Manager would come directly from the Park Development Fund.

The development of the park through acquisition of the property, infrastructure, the design and the construction phase, will require a great deal of time, expertise and experience. Staff believes Vanir Construction Management, Inc. based on the review and their level of experience and professionalism, will complete this project both timely and professionally and will be a project the City and the Community will be proud of.

Following the review meeting with Vanir Construction Management, staff is recommending an extension of services through Vanir that will greatly assist with the project. Vanir Construction Management is also being recommended to manage the pre-design development and preparation for the infrastructure needs including, but not limited to power, water, sewer, etc. from the point of service to the property line. In addition, extending the construction phase of the park from 8 months to 12 months. Within the RFP, the project reflected an 8-month period of construction. However, based on the project itself and all the variations required to complete the park, 12 months is highly recommended. Based on the extension of services the cost to oversee this entire project would be not to exceed \$489,040.00. (City will be billed for actual time, if the actual billing comes under budget, those savings will be passed on to the City).

Available Park Development Funds are more than sufficient to cover this expense and this is an item that has been anticipated as the City has looked to add additional park space. In addition, as new developments arise, the Park Development Funds will continue to increase.

The required time to manage and expertise needed to complete this project exceeds our staff and consultant capacities. Therefore staff recommends outsourcing the project management for the Rockwell Park Project.

The primary contacts for this project will be Mikal Kirchner, Recreation and Community Services Director and Shane Ferrell, Public Works Director. Each will work closely with Vanir Construction Management Inc., yet still being able to focus on their daily workloads.

<u>COST:</u> (Enter cost of item to be purchased in box below)		<u>BUDGET IMPACT:</u> (Enter amount this non-budgeted item will impact this years' budget in box below – if budgeted, enter NONE).
\$489,040.00		None.
<u>FUNDING:</u> (Enter the funding source for this item in box below – if fund exists, enter the balance in the fund).		<u>ON-GOING COST:</u> (Enter the amount that will need to be budgeted each year in box below – if one-time cost, enter NONE).
Funding Source: Park Development Fund Fund Balance: \$662,41.32		None.

RECOMMENDATION: Approve City Manager to sign and enter into agreement with Vanir Construction Management Inc. for the purpose of Project Management of the Rockwell Park Development.


Mikal Kirchner, Director of Recreation

10-1-2020
Date

/s/
Teresa Gallavan, City Manager

10/1/2020
Date

RESOLUTION NO. 2020 –

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SELMA, CALIFORNIA, APPROVING A REQUEST TO ENTER INTO A CONTRACT AGREEMENT BETWEEN THE CITY OF SELMA AND VANIR CONSTRUCTION MANAGEMENT

WHEREAS, the City has received grant funds for the development of a 28-acre park located near Rockwell Pond; and

WHEREAS, the last park developed in Selma was Shafer Park in 1989; and

WHEREAS, the City went out for submission of Request for Proposals (RFP) for a Project Manager for the Rockwell Park Project; and

WHEREAS, the City reviewed each of the RFP proposals and conducted a review, reference checks and interviews; and

WHEREAS, the City and Vanir Construction Management desire to enter into an agreement to provide Park Project Management Services; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SELMA DOES HEREBY FIND, DETERMINE, AND RESOLVE AS FOLLOWS:

SECTION 1. The above recitals are true and correct and are incorporated herein by reference.

SECTION 2. The Agreement serves as a public purpose in overseeing the park development project and construction of a new park.

SECTION 3. The City Council hereby approves the City Manager to enter into the agreement on behalf of the City of Selma with Vanir Construction Management.

SECTION 4. Vanir Construction Management shall comply with the City's Municipal Code during construction and shall provide the City with all information required by City staff, including, but not limited to, the following:

1. Proof of insurance with the City named as additional insured.
2. Indemnification of the City.

SECTION 5. The provisions of this Resolution are severable and if any provision, clause, sentence, word or part thereof is held illegal, invalid, unconstitutional, or inapplicable to any person or circumstances, such illegality, invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, sections, words or parts thereof of the Resolution or their applicability to other persons or circumstances.

SECTION 6. That the City Clerk shall certify to the adoption of this Resolution and that the same shall be in full force and effect.

PASSED, APPROVED AND ADOPTED this 5th day of October, 2020, by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:

Louis Franco, Mayor

ATTEST:

Reyna Rivera, City Clerk

CITY OF SELMA

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT ("Agreement"), is made and effective as of October 6, 2020 ("Effective Date"), between the City of Selma, a municipal corporation ("City") and Vanir Construction Management, Inc. ("Consultant"). The City and Consultant are hereinafter collectively referred to as the "Parties".

RECITALS

WHEREAS, City desires to engage Consultant to perform the services described herein, and Consultant desires to perform such services in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, City and Consultant agree as follows:

1. TERM

This Agreement shall commence on the Effective Date, and shall remain and continue in effect until tasks described herein are completed, but in no event later than December 31, 2024, unless sooner terminated pursuant to the provisions of this Agreement.

2. SERVICES

(a) Consultant shall perform the tasks ("Services") described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. ("Scope of Services"). Tasks other than those specifically described in the Scope of Services shall not be performed without prior written approval of the City. The Services shall be performed by Consultant, unless prior written approval is first obtained from the City. In the event of conflict or inconsistency between the terms of this Agreement and Exhibit A, the terms of this Agreement shall prevail.

(b) City shall have the right to request, in writing, changes to the Services. Any such changes mutually agreed upon by the Parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement.

(c) Consultant shall perform all Services in a manner reasonably satisfactory to the City and in a first-class manner in conformance with the standards of quality normally observed by an entity providing park development services, serving a municipal agency.

(d) Consultant shall comply with all applicable federal, state, and local laws, regulations and ordinances in the performance of this Agreement, including but not limited to, the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*). During the term of this

Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working on the Effective Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute or law; and (ii) City has not consented in writing to Consultant's performance of such work. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.* Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve (12) months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et. seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for Services performed pursuant to this Agreement, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

(e) Consultant represents that it has, or will secure at its own expense, all licensed personnel required to perform the Services. All Services shall be performed by Consultant or under its supervision, and all personnel engaged in the Services shall be qualified and licensed to perform such services.

3. MANAGEMENT

City's City Manager shall represent the City in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by Consultant, but shall have no authority to modify the Services or the compensation due to Consultant.

4. PAYMENT

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B ("Rate Schedule"), attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed Four Hundred Eighty Nine Thousand and Forty Dollars (\$489,040.00) for the total Term of the Agreement unless additional payment is approved as provided in this Agreement.

(b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City and Consultant at the time City's written authorization is given to Consultant for the performance of said services.

(c) Consultant shall submit invoices monthly for actual services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of Consultant's fees it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice. Any final payment under this Agreement shall be made within 45 days of receipt of an invoice therefore.

5. SUSPENSION OR TERMINATION OF AGREEMENT

(a) The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Consultant at least ten (10) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. City will consult with Consultant before serving any notice of termination of this Agreement, and if City is terminating for any breach, cause or reason, it will allow Consultant fifteen (15) days to cure any breach or correct any condition that is cause or reason for the City's contemplated termination of this Agreement. If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

(b) In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant shall submit an invoice to the City pursuant to Section 4 of this Agreement.

6. OWNERSHIP OF DOCUMENTS

(a) Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or its designees at reasonable times to review such books and records; shall give City the right to examine and audit said books and records; shall permit City to make transcripts or copies therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(b) Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused, or otherwise disposed of by the City without the permission of the

Consultant. With respect to computer files, Consultant shall make available to the City, at the Consultant's office, and upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring, copying and/or printing computer files. Consultant hereby grants to City all right, title, and interest, including any copyright, in and to the documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared by Consultant in the course of providing the services under this Agreement. All reports, documents, or other written material developed by Consultant in the performance of the Services pursuant to this Agreement, shall be and remain the property of the City.

7. INDEMNIFICATION

(a) Indemnity for professional liability

When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless the City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including legal counsel's fees and costs caused in whole or in part by any negligent or wrongful act, error or omission of Consultant, its officers, agents, employees or Subconsultants (or any agency or individual that Consultant shall bear the legal liability thereof) in the performance of professional services under this Agreement.

(b) Indemnity for other than professional liability

Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or agency for which Consultant is legally liable, including but not limited to officers, agents, employees or subcontractors of Consultant.

(c) **DUTY TO DEFEND**. In the event the City, its officers, employees, agents and/or volunteers are made a party to any action, claim, lawsuit, or other adversarial proceeding arising from the performance of the services encompassed by this Agreement, and upon demand by City, Consultant shall have an immediate duty to defend the City at Consultant's cost or at City's option, to reimburse the City for its costs of defense, including reasonable attorney's fees and costs incurred in the defense of such matters.

Payment by City is not a condition precedent to enforcement of this indemnity. In the event of any dispute between Consultant and City, as to whether liability arises from the sole negligence of the City or its officers, employees, or agents, Consultant will be obligated to pay for City's defense until such time as a final judgment has been entered adjudicating the

City as solely negligent. Consultant will not be entitled in the absence of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation.

8. INSURANCE

Consultant shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit C attached hereto and incorporated herein by reference.

9. INDEPENDENT CONSULTANT

(a) Consultant is and shall at all times remain as to the City a wholly independent consultant and/or independent contractor. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultants exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the City. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against the City, or bind the City in any manner.

(b) No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

10. LEGAL RESPONSIBILITIES

The Consultant shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Consultant shall at all times observe and comply with all such laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this Section.

11. UNDUE INFLUENCE

Consultant declares and warrants that no undue influence or pressure was used against or in concert with any officer or employee of the City in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the City has or will receive compensation, directly or indirectly, from Consultant, or from any officer, employee or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling the City to any and all remedies at law or in equity.

12. NO BENEFIT TO ARISE TO LOCAL OFFICERS AND EMPLOYEES

No member, officer, or employee of City, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the Project performed under this Agreement.

13. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

(a) All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents, or subconsultants, shall not without written authorization from the City, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the City, unless otherwise required by law or court order. (b) Consultant shall promptly notify City should Consultant, its officers, employees, agents, or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request ("Discovery"), court order, or subpoena from any person or party regarding this Agreement and the work performed there under or with respect to any project or property located within the City, unless Consultant is prohibited by law from informing the City of such Discovery, court order or subpoena. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding as allowed by law. Unless City is a party to the lawsuit, arbitration, or administrative proceeding and is adverse to Consultant in such proceeding, Consultant agrees to cooperate fully with the City and to provide the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

14. NOTICES

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To City: City of Selma
1710 Tucker Street
Selma, CA 93662
Attention: City Manager

With a Copy To: Neal Costanzo, City Attorney
Costanzo & Associates
575 E. Locust Avenue, Suite 115
Fresno, CA 93720

To Consultant: Vanir Construction Management, Inc.
Headquarters
4540 Duckhorn Drive, Suite 300
Sacramento, CA 95834

15. ASSIGNMENT

The Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City.

Before retaining or contracting with any subconsultant for any services under this Agreement, Consultant shall provide City with the identity of the proposed subconsultant, a copy of the proposed written contract between Consultant and such subconsultant which shall include and indemnity provision similar to the one provided herein and identifying City as an indemnified party, or an incorporation of the indemnity provision provided herein, and proof that such proposed subconsultant carries insurance at least equal to that required by this Agreement or obtain a written waiver from the City for such insurance.

Notwithstanding Consultant's use of any subconsultant, Consultant shall be responsible to the City for the performance of its subconsultant as it would be if Consultant had performed the Services itself. Nothing in this Agreement shall be deemed or construed to create a contractual relationship between the City and any subconsultant employed by Consultant. Consultant shall be solely responsible for payments to any subconsultants. Consultant shall indemnify, defend and hold harmless the Indemnified Parties for any claims arising from, or related to, the services performed by a subconsultant under this Agreement.

16. GOVERNING LAW/ATTORNEYS' FEES

The City and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court in Fresno County, California. If any action at law or suit in equity is brought to enforce or interpret the provisions of this Agreement, or arising out of or relating to the Services provided by Consultant under this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and all related costs, including costs of expert witnesses and consultants, as well as costs on appeal, in addition to any other relief to which it may be entitled.

17. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the Parties relating to the obligations of the Parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written and pertaining to the subject of this Agreement or with respect to the terms and conditions of this Agreement, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

18. SEVERABILITY

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

19. COUNTERPARTS

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

20. CAPTIONS

The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and shall have no significance in the interpretation of this Agreement.

21. WAIVER

The waiver by City or Consultant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in writing.

22 REMEDIES

Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the

exercise, or the forbearance of the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies.

23. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this Agreement on behalf of Consultant represents and warrants that he/she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date.

“CITY”

City of Selma

“CONSULTANT”

Vanir Construction Management, Inc.

By: _____
Teresa Gallavan, City Manager

By: _____
Steven Whitehead, President

Attest:

By: _____
Reyna Rivera, City Clerk

Approved as to form:

By: _____
Neal Costanzo, City Attorney

Attachments:	Exhibit A	Scope of Services
	Exhibit B	Rate Schedule
	Exhibit C	Insurance Requirements

EXHIBIT A

SCOPE OF SERVICES

Park Project Management of a 28-acre Park development.

Project Manager shall work closely with City Staff to develop a project schedule and a detailed scope of work for property acquisition, design and construction elements. In addition, the Project Manager will assist City with maintaining compliance with Proposition 68 Grant guidelines.

Project Manager's Basic Services:

Kick Off Meeting: A review of the Scope of the Project, communications protocols, Project Budget, Design and Construction and Grant Guidelines.

Pre-Design Phase

Shall assist the City in the project budget development to include providing infrastructure to the park, including but not limited to, power, water, sewer, etc.

Shall assist the City, to the extent possible, with coordinating with the respective utility agencies to extend all necessary utilities to the project site.

Shall assist the City in securing a Phase II and Geo Earth Testing evaluation through the City's environmental consultant.

Design Phase

Pre-Design Phase: Shall assist the City in development of a Request for Proposals for the Park Design. This service shall include the following: preparation and distribution of prequalification questionnaires; receiving and analyzing completed questionnaires; interviewing potential designers; and preparing recommendations for the City, including staff reports to City Council.

Design Phase: Shall monitor the Design Professional's compliance with the design schedule, design phase procedures and coordinate and expedite the flow of information between the Design Firm and City. Shall conduct periodic project meetings to serve as a forum for the exchange of information relating to the project and also review of design progress. Shall review all design documents for clarity, consistency, constructability and coordination. Shall make recommendations to the City based on evaluation of all design documents, plans and drawings.

Assist in completion of a 100% Schematic Design (SD) estimate and also a 50% Construction Drawing (CD) estimate.

Bid and Award Phase

Construction Pre-Qualifying Phase: Shall assist the City in development of a Bid Documents packet. Shall assist the City in developing lists of possible bidders. Services shall include the following: preparation and distribution of prequalification questionnaires; receiving and analyzing completed questionnaires; assisting City staff with interviewing possible bidders; bonding agents and financial institutions; and preparing recommendations for the City. Shall prepare a bidder's list for each bid package for approval by City.

Bid and Award Phase: Shall conduct a telephonic and correspondence campaign to attempt to increase interest among qualified bidders. Shall assist the City in preparing and placing notices and advertisements to solicit bids for the project. Shall coordinate the delivery of Bid Documents to bidders. The City shall obtain the City-approved contract documentation from the Design Professional and the Project Manager shall arrange for printing, binding, wrapping and delivery to the bidders. The Project Manager shall maintain a list of bidder's receiving Bid Documents.

Pre-Bid Conferences: In conjunction with the City and Design Professional, the Project Manager shall conduct Pre-Bid Conferences. These conferences shall be forums for the Project Manager, City and Design Professional to explain project requirements to the bidders, including information concerning schedule requirements, time and cost control. The Project Manager shall develop and coordinate procedures to provide answers to bidder's questions.

Addenda: The Project Manager shall receive from the Design Professional a copy of all Addenda. Shall review Addenda for clarity, consistency, and coordination among the bidders. Shall distribute a copy of the Addenda to each bidder receiving Bid Documents.

Bid Opening and Recommendations: Shall assist City in conducting the bid opening and shall evaluate the bids for responsiveness and price. Shall make recommendations to the City concerning the acceptance or rejection of bids.

Construction Phase

Project Management: Shall provide and maintain a management team on the Project site to provide contract administration as an agent of the City and to establish and implement coordination and communication procedures among the Project Manager, City, Design Professional and Contractors.

Construction Administration Procedures: Shall establish and implement procedures for expediting and processing requests for information, drawings, material and equipment sample submittals, contract schedule adjustments, change orders, payment request and tracking all relevant information related to

the above. Shall maintain daily job reports, as the Cities agent and representative at the construction site, if provided for in the Construction Phase Procedures approved by the City, the Project Manager shall be the party to whom requests for information, submittals, Contractor schedule adjustments, substitutes, change order requests and payment applications shall be submitted.

Project Site Meetings: Periodically the Project Manager shall conduct coordination meetings at the Project site and/or City Hall with each Contractor, the City and the Design Professional. Project Manager shall record, transcribe and distribute minutes to all attendees, including the City and Design Professional.

Review of Requests for Changes to the Contract Time and Price: Shall review the contents of requests for changes to the contract time or price submitted by a Contractor, assemble information concerning the request and endeavor to determine the cause of the requests and make recommendations to the City with respect to acceptance of the request.

Substantial Completion: In consultation with the Design Professional and City inspectors, the Project Manager shall review the contractor's request for substantial completion and final completion and recommend to the City when the Project and the Contractor's Work has achieved substantial and final completion. Shall prior to issuing a Certificate of Substantial Completion, compile a list of incomplete work which does not conform to the Contract Documents based on input from the Design Professional and City inspector's. The list shall be attached to the Certificate of Substantial Completion. Shall issue the Certificate of Substantial Completions and Certification of Final Completion to the Contractor.

Final Payment: Shall provide the City a written recommendation regarding final payment to the contractor following consultation with Design Professional and City.

EXHIBIT B
RATE SCHEDULE

<u>Positions</u>	<u>'20/'21 Rates</u>
Principal in Charge	\$235
Project Director/Sr. Project Manager	\$195
Sr. Construction Manager	\$185
Construction Manager	\$170
Asst. Construction Manager II	\$150
Asst. Construction Manager I	\$145
Project Coordinator	\$135
Project Engineer	\$125
Commissioning Agent	\$145
Administrative Assistant II	\$95
Administrative Assistant I	\$85
Estimator I	\$160
Scheduler I	\$150

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting Consultant's indemnification of City, and prior to commencement of the Services, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to the City.

General liability insurance. Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$2,000,000.00 per occurrence, \$4,000,000.00 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

Automobile liability insurance. Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$2,000,000.00 combined single limit for each accident.

Professional liability (errors & omissions) insurance. Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of \$2,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.

Workers' compensation insurance. Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000.00).

Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of the City, its officers, agents, employees and volunteers.

Proof of insurance. Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this contract. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Duration of coverage. Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may

arise from or in connection with the performance of the Services hereunder by Consultant, his agents, representatives, employees or subconsultants.

Primary/noncontributing. Coverage provided by Consultant shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

City's rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant, or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

Waiver of subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

Enforcement of contract provisions (non estoppel). Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

Requirements not limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Notice of cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide to City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

Additional insured status. General liability policies shall provide or be endorsed to provide that City and its officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess liability policies.

Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

Separation of Insureds. A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

Pass Through Clause. Consultant agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by Consultant, provide the same minimum insurance coverage and endorsements required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to City for review.

City's right to revise specifications. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City and Consultant may renegotiate Consultant's compensation.

Self-insured retentions. Any self-insured retentions must be declared to and approved by the City. The City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by the City.

Timely notice of claims. Consultant shall give the City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

Additional insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

ITEM NO: 3.

SUBJECT: Consideration of a Professional Services Agreement with Gateway Engineering Incorporated for City Engineering Services

RECOMMENDATION: Authorize City Manager to execute a Professional Service Agreement with Gateway Engineering, Inc. for Contract City Engineering Services.

DISCUSSION: Our current contract with Gateway Engineering, Inc. for City Engineering Services has come to term as of June 30, 2020. To create a competitive process, on May 22, 2020, the City executed a Request for Proposals (RFP). This process consisted of a scoring panel, reference checks, financial analysis, and a formal panel interview. To assist with this, we had three internal panel members (City Manager, Assistant City Manager, and the Public Works Director) as well as one outside panelist (Sanger's Public Works Director). The following organizations submitted proposals:

- Gateway Engineering, Inc.
- QK
- Precision Civil Engineering, Inc.
- Gouveia Engineering, Inc.

The top two scoring organizations, Gateway Engineering and QK, proceeded to the panel interviews where a consensus by all four-panel members was to continue services with our current provider. Some of the identified advantages discussed by the panel to continue services were as follows.

- **Allows Continuity on Capital Improvement Projects:** This will ensure timeliness of current construction projects because there will be no time lost in having to reassess or learn about the project and ensure critical timelines are not missed.
- **Allows Continuity with Developers and Current Projects:** There are multiple projects that Engineering is currently working on with developers. Bringing in a new Engineer would require additional time to reassess each of these projects, while at the same time taking in more. This could create delays in approvals for projects.
- **Historical Knowledge:** Gateway has currently been the City of Selma's Engineering service provider since 2012. This is an important factor because the Engineering Department is in critical meetings and decisions for future planning and development. This historical knowledge is important because having an understanding of why decisions were made in the past, allows us to be consistent in the future.

Gateway has also committed to providing additional support from their staff whenever it is required. This will ensure development projects are set as priority and comments plus approvals are done within the appropriate timeframe.

The financial analysis determined the base rate proposed by Gateway Engineering for standard Monday thru Friday 8am-Noon services would save a minimum of \$32,240 in the first year over the QK proposal. In addition, the new agreement allows the City Manager to execute proposals for capital improvement projects. This is important because Gateway's proposed contract, as well as their prior one, gives them the first right of refusal for all Engineering Service. This allows engineering services to be expedited and reduces time delays.

Staff requests authorization for the City Manager to execute the Professional Service Agreement with Gateway Engineering for the term of three years.

<i>COST:</i> (Enter cost of item to be purchased in box below)		<i>BUDGET IMPACT:</i> (Enter amount this non-budgeted item will impact this years' budget in box below – if budgeted, enter NONE).
Year One Est.: \$130,000 Year Two Est.: \$135,200 Year Three Est.: \$140,400		
<i>FUNDING:</i> (Enter the funding source for this item in box below – if fund exists, enter the balance in the fund).		<i>ON-GOING COST:</i> (Enter the amount that will need to be budgeted each year in box below – if one-time cost, enter NONE).
Funding Source: General FYE 2018-19 \$4,566,411 Fund Balance:		

RECOMMENDATION: Authorize City Manager to execute a Professional Service Agreement with Gateway Engineering, Inc. for Contract City Engineering Services.

/s/	10/1/2020
Isaac Moreno, Assistant City Manager	Date
/s/	10/1/2020
Teresa Gallavan, City Manager	Date

CITY OF SELMA

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT ("Agreement"), is made and effective as of July 1, 2020 ("Effective Date"), between the City of Selma, a municipal corporation ("City") and Gateway Engineering, Inc. ("Consultant"). The City and Consultant are hereinafter collectively referred to as the "Parties".

RECITALS

WHEREAS, City desires to engage Consultant to perform the services described herein, and Consultant desires to perform such services in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, City and Consultant agree as follows:

1. TERM

This Agreement shall commence on the Effective Date, and shall remain and continue in effect until tasks described herein are completed, but in no event later than June 30, 2023 unless sooner terminated pursuant to the provisions of this Agreement.

2. SERVICES

(a) Consultant shall perform the tasks ("Services") described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. ("Scope of Services"). Tasks other than those specifically described in the Scope of Services shall not be performed without prior written approval of the City. The Services shall be performed by Consultant, unless prior written approval is first obtained from the City. In the event of conflict or inconsistency between the terms of this Agreement and Exhibit A, the terms of this Agreement shall prevail.

(b) City shall have the right to request, in writing, changes to the Services. Any such changes mutually agreed upon by the Parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement.

(c) Consultant shall perform all Services in a manner reasonably satisfactory to the City and in a first-class manner in conformance with the standards of quality normally observed by an entity providing Engineering Services, serving a municipal agency.

(d) Consultant shall comply with all applicable federal, state, and local laws, regulations and ordinances in the performance of this Agreement,

(e) Consultant represents that it has, or will secure at its own expense, all

licensed personnel required to perform the Services. All Services shall be performed by Consultant or under its supervision, and all personnel engaged in the Services shall be qualified and licensed to perform such services.

3. MANAGEMENT

City's City Manager shall represent the City in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by Consultant, but shall have no authority to modify the Services or the compensation due to Consultant.

4. PAYMENT

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B ("Rate Schedule"), attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed One Hundred Forty Thousand Four Hundred (\$140,400) for the total Term of the Agreement unless additional payment is approved as provided in this Agreement.

(b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City and Consultant at the time City's written authorization is given to Consultant for the performance of said services.

(c) Consultant shall submit invoices monthly for actual services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of Consultant's fees it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice. Any final payment under this Agreement shall be made within 45 days of receipt of an invoice therefore.

5. SUSPENSION OR TERMINATION OF AGREEMENT

(a) The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Consultant at least ten (10) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

(b) In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant the actual value of the work performed up to the time of termination. Upon termination of the Agreement pursuant to this Section, the Consultant shall submit an invoice to the City pursuant to Section 4 of this Agreement.

6. OWNERSHIP OF DOCUMENTS

(a) Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or its designees at reasonable times to review such books and records; shall give City the right to examine and audit said books and records; shall permit City to make transcripts or copies therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(b) Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, or otherwise disposed of by the City without the permission of the Consultant. In the event of termination or suspension, with the use of the documents and files, the City agrees to indemnify and hold harmless, to the fullest extent permitted by law, Gateway Engineering, Inc., its officers, directors, employees or subconsultants, against any and all damages, liabilities or costs, including reasonable attorneys' fees that may arise from use of the documents and files. With respect to computer files, Consultant shall make available to the City, at the Consultant's office, and upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring, copying and/or printing computer files. Consultant hereby grants to City all right, title, and interest, including any copyright, in and to the documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared by Consultant in the course of providing the services under this Agreement. All reports, documents, or other written material developed by Consultant in the performance of the Services pursuant to this Agreement, shall be and remain the property of the City. Drawings, designs, recommendations and reports not stamped and signed by a registered professional shall not be utilized for the intended use.

7. INDEMNIFICATION

(a) Indemnity for professional liability

When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless the City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including legal counsel's fees and costs caused in whole or in part by any negligent or wrongful act, error or omission of Consultant, its officers, agents, employees or Subconsultants (or any agency or individual that Consultant shall bear the legal liability thereof) in the performance of professional services under this Agreement.

(b) DUTY TO DEFEND. In the event the City, its officers, employees, agents and/or volunteers are made a party to any action, claim, lawsuit, or other adversarial proceeding arising from negligence by the Consultant in the performance of the services encompassed by this Agreement, and upon demand by City, Consultant shall have an immediate duty to defend the City at Consultant's cost or at City's option, to reimburse the City for its costs of defense, including reasonable attorney's fees and costs incurred in the defense of such matters.

Payment by City is not a condition precedent to enforcement of this indemnity. In the event of any dispute between Consultant and City, as to whether liability arises from the sole negligence of the City or its officers, employees, or agents, Consultant will be obligated to pay for City's defense until such time as a final judgment has been entered adjudicating the City as solely negligent. Consultant will not be entitled in the absence of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation.

8. INSURANCE

Consultant shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit C attached hereto and incorporated herein by reference.

9. INDEPENDENT CONSULTANT

(a) Consultant is and shall at all times remain as to the City a wholly independent consultant and/or independent contractor. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultants exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the City. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against the City, or bind the City in any manner.

(b) No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

10. NOTICES

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To City: City of Selma
1710 Tucker Street
Selma, CA 93662
Attention: City Manager

With a Copy To: Neal E. Costanzo, City Attorney
Costanzo & Associates, PC
575 E. Locust Avenue, Suite 115
Fresno, CA 93720

To Consultant: Gateway Engineering Inc.
Attn: Daniel Bond, PE
405 Park Creek Drive
Clovis, CA 93611

11. ASSIGNMENT

The Consultant shall not assign the performance of this Agreement, nor any part thereof, without prior written consent of the City.

Before retaining or contracting with any subconsultant for any services under this Agreement, Consultant shall provide City with the identity of the proposed subconsultant, a copy of the proposed written contract between Consultant and such subconsultant which shall include an indemnity provision similar to the one provided herein and identifying City as an indemnified party, or an incorporation of the indemnity provision provided herein, and proof that such proposed subconsultant carries insurance at least equal to that required by this Agreement or obtain a written waiver from the City for such insurance.

Notwithstanding Consultant's use of any subconsultant, Consultant shall be responsible to the City for the performance of its subconsultant as it would be if Consultant had performed the Services itself. Nothing in this Agreement shall be deemed or construed to create a contractual relationship between the City and any subconsultant employed by Consultant. Consultant shall be solely responsible for payments to any subconsultants. Consultant shall indemnify, defend and hold harmless the Indemnified Parties for any claims arising from, or related to, the services performed by a subconsultant under this Agreement.

12. GOVERNING LAW/ATTORNEYS' FEES

The City and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court in Fresno County, California. If any action at law or suit in equity is brought to enforce or interpret the provisions of this Agreement, or arising out of or relating to the Services provided by Consultant under this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and all related costs, including costs of expert witnesses and consultants, as well as costs on appeal, in addition to any other relief to which it may be entitled.

13. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the Parties relating to the obligations of the Parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written and pertaining to the subject of this Agreement or with respect to the terms and conditions of this Agreement, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

14. SEVERABILITY

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

15. COUNTERPARTS

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

16. CAPTIONS

The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and shall have no significance in the interpretation of this Agreement.

17. WAIVER

The waiver by City or Consultant of any breach of any term, covenant or condition

herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in writing.

18. REMEDIES

Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance of the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies.

19. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this Agreement on behalf of Consultant represents and warrants that he/she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date.

"CITY"
City of Selma

"CONSULTANT"
Gateway Engineering, Inc.

By: _____
Teresa Gallavan, City Manager

By: _____
Daniel Bond, PE, President

Attest:

By: _____
Reyna Rivera, City Clerk

Approved as to form:

By: _____
Neal E. Costanzo, City Attorney

Attachments:	Exhibit A	Scope of Services
	Exhibit B	Rate Schedule
	Exhibit C	Insurance Requirements

EXHIBIT A

SCOPE OF SERVICES

Advisory Services

(1) Attendance at meetings of the City Council. The "City Engineer" shall attend all special meetings or work sessions of the City Council, as requested. In addition, prepare staff reports, Landscape, Lighting, and Maintenance Report (Engineer Report) and any other documents necessary for meeting. Regular meetings are held on the first and third Monday evening of each month.

(2) Advising Officials. The "City Engineer" shall advise City officials, employees, etc. through telephone conferences, meetings, and correspondence.

(3) Consultation on City utilities and facilities. The "City Engineer" shall furnish advice and consultation on the operation, maintenance, and permitting of the City's storm water drainage system, transportation system, and other City-owned facilities under the direction of the Assistant City Manager.

(4) Consultation on development projects/permits. The "City Engineer" shall review project plans and proposals by private parties, for compliance with City Code and other applicable requirements. He/She shall meet with residents, contractors, developers, engineers, etc. as requested.

(5) Provide services on grant applications and management: The "City Engineer" shall assist in grant applications and management for regional, state, and federal programs.

(6) Provide permit review and inspection services. The "City Engineer" shall be available to review various types of permit applications for private utility improvements, residential/commercial improvement and other common permit applications. He/She shall conduct site inspections associated with such permits and applications as needed.

(7) Attendance at meetings of Project Review Committee (PRC). The "City Engineer" shall participate as a member of the PRC under the direction of the Assistant City Manager. He/she shall review site plans and furnish comments in advance of the PRC meetings and assist applicants in understanding the Code requirements. PRC meetings are scheduled as needed.

(8) Schedule working hours at City Hall. The "City Engineer" shall hold scheduled office hours at City Hall to assist staff and the public a minimum of 20 hours per week. He/She will be a licensed Engineer that is authorized to sign and seal engineering plans.

(9) Attendance at meeting for Fresno Council of Government (FCOG). The "City Engineer" shall participate as a representative of the City of Selma all Technical Advisory Committees for FCOG. Additionally, any other FCOG related meetings as requested by the Assistant City Manager.

Public Works Construction Projects

(1) Analyze/study improvement projects. The "City Engineer" will be required to prepare preliminary engineering analysis, cost estimates and feasibility studies for various Public Works improvements.

(2) Prepare bid/contracts. The "City Engineer" will be requested to prepare detailed plans, specifications, bid and contract documents for Public Works construction projects, including State, Federal, and Community Development Block grant projects. In addition, the "City Engineer" will prepare a final cost estimate, required applications of approval of the construction by other governmental agencies, and assist the City in negotiating the acquisition of any necessary right-of-way or easement.

(3) Review bids. The "City Engineer" shall assist the City in the review of bids submitted for construction, in the selection of qualified contractors and in the inspection of construction work. The "City Engineer" will provide general supervision of the contractor for Public Works construction projects.

Capital Project Management

(1) Identify capital projects. The "City Engineer" will identify current and possible future capital projects and document budget, scope, schedule, status, organizational responsibility (including other Professional Engineering Firms) and funding sources.

(2) Organize and prioritize all capital projects. The "City Engineer" will develop regular reporting and monitoring processes to ensure implementation and completion of scheduled project tasks.

(3) Capital project tracking. The "City Engineer" will track and monitor project status and specific milestone completion. He/She will facilitate discussions and decisions necessary to keep projects on schedule.

(4) Identify and report significant deficiencies. The "City Engineer" will identify and report concerns regarding meeting capital projects goals to the Assistant City Manager on a weekly basis.

(5) Monitor budgets. The "City Engineer" will process payments for all State, Federal, and local grant funding, monitor budget expenditures and assist with review of contracts, proposals, invoices and Purchase Orders.

(6) Document management. The "City Engineer" will create and store computer files, paper copies, and other types of records and files of work performed for the City using the systems designated by the Assistant City Manager. The professional services consulting agreement entered into by and between the City and City Engineer shall specify the scope of included services. The City reserves the right to enter into additional agreements with the City Engineer for specified projects (e.g. the design or construction observation of major public improvements), to contract with third parties for such services, or if within the scope of the City Engineer agreement, utilize the same to provide for such services. The City anticipates that the negotiation of the scope of services and the format of payment for such services shall be a collaborative undertaking between the City and the successful respondent, but requests that each respondent provide a proposal outlining their suggested approach (e.g. monthly retainer for a specified amount of work; hourly; hourly plus expenses; blended approach; etc.).

Other Duties Required

- (1) Geographic Information System (GIS). The "City Engineer" will create and maintain a GIS database for City streets, storm drain, and other mapping needs.
- (2) Pavement Management System. The "City Engineer" will maintain and update City owned pavement management software.
- (3) Monthly Report. The "City Engineer" will provide a monthly report outlining project activities and updates.

EXHIBIT B

RATE SCHEDULE

Gateway Engineering proposes to provide the City of Selma with two rotating Co-City Engineer's, Daniel Bond and Joseph Daggett, at a rate discounted as shown below. This discounted rate is specifically for tasks performed in the scheduled hours and duties as City Engineer, whether at City Hall or performed remotely, and is provided with the understanding that Gateway Engineering will have first right of refusal to perform design and consulting services for capital improvement and other civil engineering and land survey related projects for the City of Selma, including all projects for which Gateway either assisted with or prepared successful grant applications. Project work and requests for additional staff assignments will be performed at the normal rates shown on the fee schedule. All services performed under the provision giving Gateway the right of first refusal, above, may be approved by the City Manager, without City Council approval and shall also be performed at the normal rates shown on this Rate Schedule, unless the City Manager and Gateway agree that Gateway will provide such services at a flat percentage of the project cost or project grant. Gateway will continue to travel to and from the City of Selma at no cost for time or mileage.

Selma City Engineer:

July 1, 2020 – June 30, 2021	\$125.00 / Hr.
July 1, 2021 – June 30, 2022	\$130.00 / Hr.
July 1, 2022 – June 30, 2023	\$135.00 / Hr.

Additional Services at Standard Rates Below

<u>Employee Classification</u>	<u>Hourly Rate</u>
Senior Engineer	\$170 / hr
Senior Land Surveyor	\$170 / hr
Associate Engineer	\$140 / hr
Associate Land Surveyor	\$130 / hr
Staff Engineer	\$110 / hr
Engineering Tech	\$100 / hr
Land Surveying Tech	\$110 / hr
Assistant Engineering Tech	\$ 80 / hr
Assistant Surveying Tech	\$ 75 / hr
GIS Technician	\$ 80 / hr
Clerical	\$ 70 / hr
Expert Witness	\$300 / hr

<u>Survey Crews (Non-Prevailing Wage)</u>	<u>Hourly Rate</u>
One man crew	\$160 / hr
Two-man crew	\$240 / hr

<u>Survey Crews (Prevailing Wage)</u>	<u>Hourly Rate</u>
One man crew	\$225 / hr
Two-man crew	\$300 / hr

<u>Reimbursable Expenses</u>	Actual cost +15%
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EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting Consultant's indemnification of City, and prior to commencement of the Services, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to the City.

General liability insurance. Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$2,000,000.00 per occurrence, \$4,000,000.00 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

Automobile liability insurance. Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$2,000,000.00 combined single limit for each accident.

Professional liability (errors & omissions) insurance. Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of \$2,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.

Workers' compensation insurance. Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000.00).

Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of the City, its officers, agents, employees and volunteers.

Proof of insurance. Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this contract. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Duration of coverage. Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Services hereunder by Consultant, his agents, representatives, employees or subconsultants.

Primary/noncontributing. Coverage provided by Consultant shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

City's rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant, or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

Waiver of subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

Enforcement of contract provisions (non estoppel). Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

Requirements not limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Notice of cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide to City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

Additional insured status. General liability policies shall provide or be endorsed to provide that City and its officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess liability policies.

Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

Separation of Insureds. A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

Pass Through Clause. Consultant agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by Consultant, provide the same minimum insurance coverage and endorsements required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to City for review.

City's right to revise specifications. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City and Consultant may renegotiate Consultant's compensation.

Self-insured retentions. Any self-insured retentions must be declared to and approved by the City. The City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by the City.

Timely notice of claims. Consultant shall give the City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

Additional insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

ITEM NO: 4.

SUBJECT: Consideration and direction of City's position on the League Resolution to amend Section 230 of the Decency Act of 1996 to require social media companies to remove materials which promote criminal activities

RECOMMENDATION: Council consider City's position of League Resolution and provide voting delegate(s) direction.

DISCUSSION: The League Resolution for Council consideration calls for an amendment of Section 230 of the Communications Decency Act ("CDA") of 1996 to require social media companies to remove materials which promote criminal activities.

Section 230 and other Constitutional Concerns at its core, Section 230(c)(1) of the CDA provides immunity from liability for providers and users of an "interactive computer service" who publish information provided by third-party users. Essentially, this protects websites from lawsuits if a user posts something illegal, although there are exceptions for copyright violations, sex work-related material, and violations of federal criminal law.

Protections from Section 230 have come under more recent scrutiny on issues related to hate speech and ideological biases in relation to the influence technology companies can hold on political discussions.

Background Information to Resolution

Source: City of Cerritos

Background: Social media platforms are now used as a primary means of communication, including by criminals who use them to advertise locations, dates, and times where the criminal acts will take place. Such communications, because they occur online, render the online platform immune from any civil liability for the costs incurred by law enforcement agencies that respond under Section 230 of the Communications Decency Act of 1996. Immunity from civil liability extends even to injunctive relief, thus preventing local governments from merely seeking an injunction against the online platform to have such a post removed.

The City of Cerritos supports the rights of free speech and assembly guaranteed under the First Amendment, but believes cities should have the ability to hold social media companies liable for their role in promoting criminal acts. Recently, the City suffered thousands of dollars in damages to respond to online threats that the Cerritos Mall would be looted. Anonymous posts on Instagram.com invited followers to “work together to loot Cerritos [M]all” only several days after the Lakewood Mall had been looted, causing thousands of dollars in damages. The posts were made under the names “cerritosmalllooting” and “cantstopusall,” among others. The City of Cerritos had no choice but to initiate response to protect the Mall and the public from this credible threat.

At the same time, local governments face historic shortfalls owing to the economic effects of COVID-19, the nation’s social media platforms are seeing a record rise in profits. The broad immunity provided by Section 230 is completely untenable. Online platforms should be held responsible—and liable—for the direct harm they facilitate. Local governments are in no position to bear the costs of the crimes facilitated by these companies alone.

Congress is currently reviewing antitrust legislation and by extension, Section 230’s immunity provisions. The League urges Congress to amend Section 230 to limit the immunity provided to online platforms when they promote criminal activity to provide local governments some measurable form of relief.

There are five cities that have submitted letters of concurrence with this item. The Policy Advisory Committee met and reviewed the Resolution and voted to support the Resolution with a 19-18 vote.

RECOMMENDATION: Council consider City’s position of League Resolution and provide voting delegate(s) direction.

/s/

Teresa Gallavan, City Manager

10/1/2020

Date



***Annual Conference
Resolutions Packet***

2020 Annual Conference Resolutions



October 7 – 9, 2020

INFORMATION AND PROCEDURES

RESOLUTIONS CONTAINED IN THIS PACKET: The League bylaws provide that resolutions shall be referred by the president to an appropriate policy committee for review and recommendation. Resolutions with committee recommendations shall then be considered by the General Resolutions Committee at the Annual Conference.

This year, one resolution has been introduced for consideration at the Annual Conference and referred to League policy committees.

POLICY COMMITTEES: Two policy committees will meet virtually at the Annual Conference to consider and take action on the resolution referred to them. The committees are: Governance, Transparency & Labor Relations and Public Safety. These committees will meet virtually on Tuesday, September 29, with the Governance, Transparency and Labor Relations Policy Committee meeting from 9:30 – 11:30 a.m. and the Public Safety Policy Committee meeting from 1:00 – 3:00 p.m. The sponsor of the resolution has been notified of the time and location of the meeting.

GENERAL RESOLUTIONS COMMITTEE: This committee will meet virtually at 1:00 p.m. on Thursday, October 8, to consider the reports of the policy committees regarding the resolutions. This committee includes one representative from each of the League's regional divisions, functional departments and standing policy committees, as well as other individuals appointed by the League president.

GENERAL ASSEMBLY: This meeting will be held virtually at 11:00 a.m. on Friday, October 9.

PETITIONED RESOLUTIONS: For those issues that develop after the normal 60-day deadline, a resolution may be introduced at the Annual Conference with a petition signed by designated voting delegates of 10 percent of all member cities (48 valid signatures required) and presented to the Voting Delegates Desk at least 24 hours prior to the time set for convening the Annual Business Meeting of the General Assembly. This year, that deadline is 12:30 p.m., Thursday, October 8.

Any questions concerning the resolutions procedures may be directed to Meg Desmond at the League office: mdesmond@cacities.org or (916) 658-8224

GUIDELINES FOR ANNUAL CONFERENCE RESOLUTIONS

Policy development is a vital and ongoing process within the League. The principal means for deciding policy on the important issues facing cities is through the League's seven standing policy committees and the board of directors. The process allows for timely consideration of issues in a changing environment and assures city officials the opportunity to both initiate and influence policy decisions.

Annual conference resolutions constitute an additional way to develop League policy. Resolutions should adhere to the following criteria.

Guidelines for Annual Conference Resolutions

1. Only issues that have a direct bearing on municipal affairs should be considered or adopted at the Annual Conference.
2. The issue is not of a purely local or regional concern.
3. The recommended policy should not simply restate existing League policy.
4. The resolution should be directed at achieving one of the following objectives:
 - (a) Focus public or media attention on an issue of major importance to cities.
 - (b) Establish a new direction for League policy by establishing general principals around which more detailed policies may be developed by policy committees and the board of directors.
 - (c) Consider important issues not adequately addressed by the policy committees and board of directors.
 - (d) Amend the League bylaws (requires 2/3 vote at General Assembly).

KEY TO ACTIONS TAKEN ON RESOLUTIONS

Resolutions have been grouped by policy committees to which they have been assigned.

Number	Key Word Index	Reviewing Body Action		
		1	2	3
		1 - Policy Committee Recommendation to General Resolutions Committee		
		2 - General Resolutions Committee		
		3 - General Assembly		

GOVERNANCE, TRANSPARENCY & LABOR RELATIONS POLICY COMMITTEE

		1	2	3
1	Amendment to Section 230 of The Communications Decency Act of 1996			

PUBLIC SAFETY POLICY COMMITTEE

		1	2	3
1	Amendment to Section 230 of The Communications Decency Act of 1996			

KEY TO ACTIONS TAKEN ON RESOLUTIONS *(Continued)*

Resolutions have been grouped by policy committees to which they have been assigned.

KEY TO REVIEWING BODIES

1. Policy Committee
2. General Resolutions Committee
3. General Assembly

KEY TO ACTIONS TAKEN

- | | |
|-----|-------------------------------------------------------------|
| A | Approve |
| D | Disapprove |
| N | No Action |
| R | Refer to appropriate policy committee for study |
| a | Amend+ |
| Aa | Approve as amended+ |
| Aaa | Approve with additional amendment(s)+ |
| Ra | Refer as amended to appropriate policy committee for study+ |
| Raa | Additional amendments and refer+ |
| Da | Amend (for clarity or brevity) and Disapprove+ |
| Na | Amend (for clarity or brevity) and take No Action+ |
| W | Withdrawn by Sponsor |

ACTION FOOTNOTES

- * Subject matter covered in another resolution
- ** Existing League policy
- *** Local authority presently exists

Procedural Note:

The League of California Cities resolution process at the Annual Conference is guided by the League Bylaws. A helpful explanation of this process can be found on the League's website by clicking on this link: [Resolution Process](#).

1. A RESOLUTION OF THE GENERAL ASSEMBLY OF THE LEAGUE OF CALIFORNIA CITIES CALLING FOR AN AMENDMENT OF SECTION 230 OF THE COMMUNICATIONS DECENCY ACT OF 1996 TO REQUIRE SOCIAL MEDIA COMPANIES TO REMOVE MATERIALS WHICH PROMOTE CRIMINAL ACTIVITIES

Source: City of Cerritos

Concurrence of five or more cities/city officials

Cities: City of Hawaiian Gardens, City of Lakewood, City of Ontario, City of Rancho Cucamonga, City of Roseville

Referred to: Governance, Transparency and Labor Relations and Public Safety Policy Committees

WHEREAS, local law enforcement agencies seek to protect their communities' residents, businesses, and property owners from crime; and

WHEREAS, increasingly, criminals use social media platforms to post notices of places, dates and times for their followers to meet to commit crimes; and

WHEREAS, Section 230 of the Communications Decency Act of 1996 currently provides online platforms (including social media platforms) immunity from civil liability based on third-party content and for the removal of content; and

WHEREAS, in the 25 years since Section 230's enactment, online platforms no longer function simply as forums for the posting of third-party content but rather use sophisticated algorithms to promote content and to connect users; and

WHEREAS, the United States Department of Justice, in its June 2020 report, "Section 230 — Nurturing Innovation or Fostering Unaccountability?," concluded the expansive interpretation courts have given Section 230 has left online platforms immune from a wide array of illicit activity on their services, with little transparency or accountability, noting it "makes little sense" to immunize from civil liability an online platform that purposefully facilitates or solicits third-party content or activity that violates federal criminal law; and

WHEREAS, current court precedent interpreting Section 230 also precludes state and local jurisdictions from enforcing criminal laws against such online platforms that, while not actually performing unlawful activities, facilitate them; and

WHEREAS, amendment of Section 230 is necessary to clarify that online platforms are not immune from civil liability for promoting criminal activities; and

NOW, THEREFORE, BE IT RESOLVED at the League General Assembly, assembled at the League Annual Conference on October 9, 2020 in Long Beach, California, that the League calls upon the U.S. Congress to amend Section 230 of the Communications Decency Act of 1996 to condition immunity from civil liability on the following:

1. Online platforms must establish and implement a reasonable program to identify and take down content which solicits criminal activity; and
2. Online platforms must provide to law enforcement information which will assist in the identification and apprehension of persons who use the services of the platform to solicit and to engage in criminal activity; and
3. An online platform that willfully or negligently fails in either of these duties is not immune from enforcement of state and local laws which impose criminal or civil liability for such failure.

Background Information to Resolution

Source: Los Angeles County Division

Background:

Social media platforms are now used as a primary means of communication, including by criminals who use them to advertise locations, dates, and times where the criminal acts will take place. Such communications, because they occur online, render the online platform immune from any civil liability for the costs incurred by law enforcement agencies that respond under Section 230 of the Communications Decency Act of 1996. Immunity from civil liability extends even to injunctive relief, thus preventing local governments from merely seeking an injunction against the online platform to have such a post removed.

The City of Cerritos supports the rights of free speech and assembly guaranteed under the First Amendment, but believes cities should have the ability to hold social media companies liable for their role in promoting criminal acts. Recently, the City suffered thousands of dollars in damages to respond to online threats that the Cerritos Mall would be looted. Anonymous posts on Instagram.com invited followers to “work together to loot Cerritos [M]all” only several days after the Lakewood Mall had been looted, causing thousands of dollars in damages. The posts were made under the names “cerritosmalllooting” and “cantstopusall,” among others. The City of Cerritos had no choice but to initiate response to protect the Mall and the public from this credible threat.

At the same time local governments face historic shortfalls owing to the economic effects of COVID-19, the nation’s social media platforms are seeing a record rise in profits. The broad immunity provided by Section 230 is completely untenable. Online platforms should be held responsible—and liable—for the direct harm they facilitate. Local governments are in no position to bear the costs of the crimes facilitated by these companies alone.

Congress is currently reviewing antitrust legislation and by extension, Section 230’s immunity provisions. The League urges Congress to amend Section 230 to limit the immunity provided to online platforms when they promote criminal activity to provide local governments some measurable form of relief.

League of California Cities Staff Analysis on Resolution No. 1

Staff: Charles Harvey, Legislative Representative
Bijan Mehryar, Legislative Representative
Caroline Cirrincione, Policy Analyst
Johnnie Piña, Policy Analyst

Committees: Governance, Transparency and Labor Relations
Public Safety

Summary:

This resolution states that the League of California Cities should urge Congress to amend Section 230 of the federal Communications Decency Act of 1996 (CDA) to limit the immunity provided to online platforms where their forums enable criminal activity to be promoted.

Ultimately, the policy objectives proposed under this resolution, if enacted, would incentivize social media companies to establish and implement a reasonable program to identify and remove content that solicits criminal activity.

Background:

The City of Cerritos is sponsoring this resolution in reaction to events whereby persons, using social media platforms to coordinate locations, dates, and times for their planned criminal activity, have committed acts of looting and vandalism resulting in both actual economic harm for targeted businesses, and pecuniary loss to cities who used resources to prevent such acts from occurring when such plans are discovered.

For example, just days after the Lakewood Mall had been looted, the City of Cerritos uncovered online communications via social media that persons were planning to target the nearby Cerritos Mall. Consequently, the city felt compelled to undertake measures to protect the Cerritos Mall, costing the city thousands of dollars to guard against what officials believed to be a credible threat.

Staff Comments:

Overview:

While there is certainly an argument to substantiate concerns around censorship, the use of social media as a tool for organizing violence is equally disturbing.

Throughout much of the 2020 Summer, there have been many reports of looting happening across the country during what were otherwise mostly peaceful demonstrations. Combined with the speculation of who is really behind the looting and why, the mayhem has usurped the message of peaceful protestors, causing a great deal of property damage in the process. Likewise, these criminal actions have upended the livelihood of some small business owners, many of whom were already reeling in the wake of the COVID-19 pandemic.

While social media allows people to connect in real time with others all over the world, organized illegal activity using social media is made easier by the anonymous nature of virtual interactions.

Nation's Reaction to the Murder of George Floyd:

Shortly after the senseless killing of George Floyd by law enforcement on May 26, 2020, civil unrest began as local protests in the Minneapolis–Saint Paul metropolitan area of Minnesota before quickly spreading nationwide to more than 2,000 cities and towns across the United States, and in approximately 60 countries in support of the Black Lives Matter movement. Protests unfolded across the country throughout the entire month of June and into July, and persisted in a handful of cities such as Portland and Seattle into the month of August.

Although the majority of protests were peaceful, some demonstrations in cities escalated into riots, looting, and street skirmishes with police. While much of the nation's focus has been on addressing police misconduct, police brutality, and systemic racism, some have used demonstrators' peaceful protests on these topics as opportunities to loot and/or vandalize businesses, almost exclusively under the guise of the "Black Lives Matter" movement. It has been uncovered that these "flash robs"¹ were coordinated through the use of social media. The spontaneity and speed of the attacks enabled by social media make it challenging for the police to stop these criminal events as they are occurring, let alone prevent them from commencing altogether.

As these events started occurring across the country, investigators quickly began combing through Facebook, Twitter, and Instagram seeking to identify potentially violent extremists, looters, and vandals and finding ways to charge them after — and in some cases before — they sow chaos. While this technique has alarmed civil liberties advocates, who argue the strategy could negatively impact online speech, law enforcement officials claim it aligns with investigation strategies employed in the past.

Section 230 and other Constitutional Concerns

At its core, Section 230(c)(1) of the CDA provides immunity from liability for providers and users of an "interactive computer service" who publish information provided by third-party users. Essentially, this protects websites from lawsuits if a user posts something illegal, although there are exceptions for copyright violations, sex work-related material, and violations of federal criminal law.

Protections from Section 230 have come under more recent scrutiny on issues related to hate speech and ideological biases in relation to the influence technology companies can hold on political discussions.

Setting aside Section 230, there are some potential constitutional issues one could raise, should there be an attempt to implement such a resolution into statute.

¹ The "flash robs" phenomenon—where social media is used to organize groups of teens and young adults to quickly ransack and loot various retail stores—began to occur sporadically throughout the United States over the past ten years.

In the United States, the First Amendment prohibits the government from restricting most forms of speech, which would include many proposals to force tech companies to moderate content. While “illegal” types of speech enjoy limited or no First Amendment protection, the line for delineating between “legal” and “illegal” speech is very difficult to determine. Consequently, one would expect online platforms to push back on whether there is a constitutionally feasible way for them to “identify” protected speech versus unprotected speech, or whether there is a feasible way to define “content which solicits criminal activity.” A law requiring companies to moderate content based on the political viewpoint it expresses, for example, would likely be struck down as unconstitutional.

Nonetheless, private companies can create rules to restrict speech if they so choose. Online platforms sometimes argue they have constitutionally-protected First Amendment rights in their “editorial activity,” and therefore, it violates their constitutional rights to require them to monitor (i.e., “identify and take down”) content that may be protected under the First Amendment. They may also argue, along the same lines, that the government may not condition the granting of a privilege (i.e., immunity) on doing things that amount to a violation of their first amendment rights. This is why Facebook and Twitter ban hate speech and other verifiably false information, for example, even though such speech is permitted under the First Amendment.

With respect to privacy and the Fourth Amendment, online platforms may argue that requiring them to “provide to law enforcement information that will assist in the identification and apprehension of persons who use the services of the platform to solicit and to engage in criminal activity,” turns them into government actors that search users’ accounts without a warrant based on probable cause, in violation of the Fourth Amendment.

Industry Perspective

Unsurprisingly, industry stakeholders have strong opinions for what such changes could mean for their respective business models.

For instance, a Facebook spokesperson recently noted in a Fortune article that, “By exposing companies to potential liability for everything that billions of people around the world say, this would penalize companies that choose to allow controversial speech and encourage platforms to censor anything that might offend anyone.”

The article acknowledges that in recent years, both political parties have put social media companies under increased scrutiny, but they are not unified in their stated concerns. While Republicans accuse the companies of unfairly censoring their post, Democrats complain that these companies fail to do enough to block misinformation, violent content, and hate speech.

The article concludes that there is no way companies like Facebook and Twitter could operate without Section 230, and that the removal of this section would thereby “eliminate social media as we know it.”

Recent Federal Action on Social Media

The President recently issued an *Executive Order on Preventing Online Censorship*. In it, he notes the following:

“The growth of online platforms in recent years raises important questions about applying the ideals of the First Amendment to modern communications technology. Today, many Americans follow the news, stay in touch with friends and family, and share their views on current events through social media and other online platforms. As a result, these platforms function in many ways as a 21st century equivalent of the public square.

Twitter, Facebook, Instagram, and YouTube wield immense, if not unprecedented, power to shape the interpretation of public events; to censor, delete, or disappear information; and to control what people see or do not see.”

Ultimately the President implores the U.S. Attorney General to develop a proposal for federal legislation that “would be useful to promote the policy objectives of this order.” The President is not subtle in communicating his desire to ultimately see legislation heavily slanted toward the preservation of free speech on social media, which some interpret as a maneuver to preempt Twitter and Facebook from regulating speech they otherwise deem as hateful or demonstrably false.

Considerations for Congress

Courts have generally construed Section 230 to grant internet service providers broad immunity for hosting others’ content. Many have claimed that Section 230’s immunity provisions were critical to the development of the modern internet, and some continue to defend Section 230’s broad scope. But simultaneously, a variety of commentators and legislators have questioned whether those immunity provisions should now be narrowed, given that the internet looks much different today than it did in 1996 when Section 230 was first enacted.

One way for Congress to narrow Section 230’s liability shield would be to create additional exceptions, as it did with FOSTA and SESTA². If a lawsuit does not fall into one of the express exceptions contained in Section 230(e)³, courts may have to engage in a highly fact-specific inquiry to determine whether Section 230 immunity applies: Section 230(c)(1) immunity will be inapplicable if the provider itself has developed or helped to develop the disputed content, while Section 230(c)(2) immunity may not apply if a service provider’s decision to restrict access to content was not made in good faith.

Date Storage and Usage Considerations for Cities

Section 2 of the conditions the resolution applies to civil immunity requires that online platforms provide relevant information to law enforcement to assist in the identification and apprehension of persons who use the services of the platform to solicit and to engage in criminal activity. This section would most likely require the development of new procedures and protocols that govern law enforcements usage and retention of such information. Those new policies and procedures would undoubtedly raise privacy concerns depending on how wide the latitude is for law

² The Fight Online Sex Trafficking Act (FOSTA) and the Stop Enabling Sex Traffickers Act (SESTA) create an exception to Section 230 that means website publishers *would* be responsible if third parties are found to be posting ads for prostitution — including consensual sex work — on their platforms.

³ Section 230(e) says that Section 230 will not apply to: (1) federal criminal laws; (2) intellectual property laws; (3) any state law that is “consistent with” Section 230; (4) the Electronic Communications Privacy Act of 1986; and (5) civil actions or state prosecutions where the underlying conduct violates federal law prohibiting sex trafficking.

enforcement to request such information. In those circumstances cities could end up themselves incurring new liability for the governance of data that could either violate certain privacy rules or increase their data governance costs.

Fiscal Impact:

Unlike the costly resources needed to support or oppose a ballot measure, a federal resolution from the League of California Cities that simply urges Congress to undertake certain action should have a negligible fiscal impact, if any monetary impact at all.

Regarding cities, if social media had no immunity for its failure to police content that solicits criminal activity, then an individual city could theoretically save thousands if not millions of dollars, depending on its size and other subjective circumstances. Collectively, cities across the country could potentially save at least hundreds of millions between redress for actual economic harm suffered and/or the cost of preventative measures taken to stop criminal activity from occurring in the first place.

Conversely, if social media platforms were to shut down, due to an inability to comply with a policy requirement to regulate speech on the internet, it is unclear on how cities might be impacted from a fiscal standpoint.

Existing League Policy:

Public Safety:

Law Enforcement

The League supports the promotion of public safety through:

- Stiffer penalties for violent offenders, and
- Protecting state Citizens' Option for Public Safety (COPS) and federal Community Oriented Police Services (COPS) funding and advocating for additional funding for local agencies to recoup the costs of crime and increase community safety.

Violence

The League supports the reduction of violence through strategies that address gang violence, domestic violence, and youth access to tools of violence, including but not limited to firearms, knives, etc.

The League supports the use of local, state, and federal collaborative prevention and intervention methods to reduce youth and gang violence.

Governance, Transparency & Labor Relations:

Private Sector Liability

The League will work closely with private sector representatives to evaluate the potential for League support of civil justice reform measures designed to improve the business climate in California. These measures should be evaluated on a case-by-case basis through the League police process.

Questions to Consider:

Many cities obviously believe that creating civil liability for social media platforms—due to their role in providing the communication mediums for those who organize looting attacks— is key to deterring this organized criminal activity.

If such a change was actually passed by Congress, it would force social media to essentially police every conversation on stakeholders' respective platforms, putting immense pressure on the industry to make subjective determinations about what conversations are appropriate and what are unacceptable.

At the end of the day, there are a few questions to consider in assessing this proposed resolution:

- 1) *What would this resolution's impact be on free speech and government censorship?*
- 2) *What are the expectations for cities when they receive information from a social media platform about a potentially credible threat in their respective communities? Does a city become liable for having information from a social media platform and the threat occurs?*
- 3) *What would the costs be to develop and maintain new data governance policies, including data infrastructure, to store this information?*
- 4) *What is the role of the League in engaging in issues relating to someone's privacy?*

Support:

The following letters of concurrence were received:

City of Hawaiian Gardens
City of Lakewood
City of Ontario
City of Rancho Cucamonga
City of Roseville

LETTERS OF CONCURRENCE

Resolution No. 1

**Amendment to Section 230 of the Communications
Decency Act of 1996**



CITY OF HAWAIIAN GARDENS

"Our Youth - Our Future"

August 7, 2020

John Dunbar, President
jdunbar@yville.com
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Dear President Dunbar:

On August 3, 2020, the Cerritos City Council approved to sponsor a **Resolution of the City Council of the City of Cerritos Submitting to the League of California Cities General Assembly a Proposed Resolution Regarding Support of Legislation Related to Social Media Platform Accountability for Promotion of Criminal Acts.**

This proposed resolution with the required background information will be submitted to the League of California Cities for consideration by the General Assembly at the Annual Conference on October 9, 2020. (Attachments 1 and 2) The intent of the resolution is to address the use of social medial platforms for posting information that leads followers to meet and commit crimes and to also hold these platforms and the persons who post said information civilly and criminally accountable for all costs incurred by the local jurisdictions where the crimes occurred.

The public safety efforts in the City of Hawaiian Gardens would certainly benefit from such legislation. This letter serves to support the City of Cerritos in their efforts to submit of the above mentioned resolution to the League of California Cities for consideration at the 2020 Annual Conference.

Sincerely,

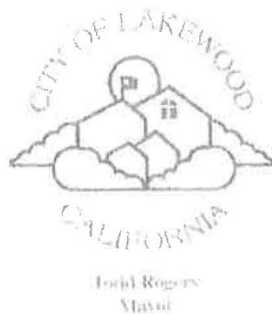


Ernie Hernandez
City Manager

cc Blanca Pacheco, President, LA County Division/League of California Cities - bpacheco@downeyca.org
Meg Desmond, League of California Cities - mdesmond@cacities.org
Kristine Guerrero, LA County Division/League of California Cities - kguerrero@cacities.org
Kathy Matsumoto, Assistant City Manager, City of Cerritos - kmatsumoto@cerritos.us

Jeff Wood
Vice Mayor

Steve Crist
Council Member



Art Pe
Council Member

Diane Dunbar
Council Member

August 5, 2020

John Dunbar, President
jdunbar@yville.com
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Dear President Dunbar:

On August 3, 2020, the Cerritos City Council approved to sponsor a **Resolution of the City Council of the City of Cerritos Submitting to the League of California Cities General Assembly a Proposed Resolution Regarding Support of Legislation Related to Social Media Platform Accountability for Promotion of Criminal Acts.**

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This letter serves to support the City of Cerritos in their efforts to submit the above mentioned resolution to the League of California Cities for consideration at the 2020 Annual Conference.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd Rogers", is positioned above the printed name and title.

Todd Rogers
Mayor

cc: Blanca Pacheco, President, LA County Division/League of California Cities - bpacheco@downeyca.org
Meg Desmond, League of California Cities - mdesmond@cacities.org
Kristine Guerrero, LA County Division/League of California Cities - kguerrero@cacities.org
Kathy Matsumoto, Assistant City Manager, City of Cerritos - kmatsumoto@cerritos.us

Lakewood

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CITY OF

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MAYOR

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ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SCOTT OCHOA
CITY MANAGER

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

August 6, 2020

John Dunbar, President
jdunbar@yville.com
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Dear President Dunbar:

On August 3, 2020, the Cerritos City Council approved to sponsor a **Resolution of the City Council of the City of Cerritos Submitting to the League of California Cities General Assembly a Proposed Resolution Regarding Support of Legislation Related to Social Media Platform Accountability for Promotion of Criminal Acts.**

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This letter serves to support the City of Cerritos in their efforts to submit the above-mentioned resolution to the League of California Cities for consideration at the 2020 Annual Conference.

Sincerely,

Alan D. Wapner
Council Member
League of California Cities Board Member

c: Blanca Pacheco, President, LA County Division/League of California Cities - bpacheco@downeyca.org
Meg Desmond, League of California Cities - mdesmond@cacities.org
Kristine Guerrero, LA County Division/League of California Cities - kguerrero@cacities.org
Kathy Matsumoto, Assistant City Manager, City of Cerritos - kmatsumoto@cerritos.us



CITY OF RANCHO CUCAMONGA

10500 Civic Center Drive | Rancho Cucamonga, CA 91730 | 909.477.2700 | www.CityofRC.us

August 6, 2020

John Dunbar, President
jdunbar@yville.com
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Dear President Dunbar:

On August 3, 2020, the Cerritos City Council approved to sponsor a **Resolution of the City Council of the City of Cerritos Submitting to the League of California Cities General Assembly a Proposed Resolution Regarding Support of Legislation Related to Social Media Platform Accountability for Promotion of Criminal Acts.**

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On behalf of the City of Rancho Cucamonga, this letter serves to support the City of Cerritos in their efforts to submit the above mentioned resolution to the League of California Cities for consideration at the 2020 Annual Conference.

Sincerely,

L. Dennis Michael
Mayor

cc: Blanca Pacheco, President, LA County Division/League of California Cities - bpacheco@downeyca.org
Meg Desmond, League of California Cities - mdesmond@cacities.org
Kristine Guerrero, LA County Division/League of California Cities - kguerrero@cacities.org
Kathy Matsumoto, Assistant City Manager, City of Cerritos - kmatsumoto@cerritos.us



City Council
311 Vernon Street
Roseville, California 95678

August 7, 2020

John Dunbar, President
jdunbar@yville.com
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Dear President Dunbar:

On August 3, 2020, the Cerritos City Council approved to sponsor a **Resolution of the City Council of the City of Cerritos Submitting to the League of California Cities General Assembly a Proposed Resolution Regarding Support of Legislation Related to Social Media Platform Accountability for Promotion of Criminal Acts**.

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On behalf of the City of Roseville, this letter serves to support the City of Cerritos in their efforts to submit the above mentioned resolution to the League of California Cities for consideration at the 2020 Annual Conference.

Sincerely,

A handwritten signature in black ink, appearing to read "John B. Allard II", written over a horizontal line.

John B. Allard II,
Mayor

Cc: Blanca Pacheco, President, LA County Division/League of California Cities - bpacheco@downeyca.org
Meg Desmond, League of California Cities - mdesmond@cacities.org
Kristine Guerrero, LA County Division/League of California Cities - kquerrero@cacities.org
Kathy Matsumoto, Assistant City Manager, City of Cerritos - kmatsumoto@cerritos.us
Jason Gonsalves, Joe A. Gonsalves and Son